(Pub. L. 92–587, title II, §205, Oct. 27, 1972, 86 Stat. 1297.)

CHAPTER 12—TRADE ACT OF 1974

§ 2101. Short title

This chapter may be cited as the ''Trade Act of 1974''.

(Pub. L. 93–618, § 1, Jan. 3, 1975, 88 Stat. 1978.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 93–618, which in addition to enacting this chapter enacted section 1863 of this title, amended sections 160, 162, 163, 164, 170a, 1202, 1303, 1315, 1321, 1330, 1332, 1333, 1337, 1352, 1484, 1516, 1806, 1862, 1872, 1885, and 1981 of this title, sections 5312, 5314, 5315, and 5316 of Title 5, Government Organization and Employees, section 301 of Title 13, Census, section 3302 of Title 26, Internal Revenue Code, sections 2631 and 2632 of Title 28, Judiciary and Judicial Procedure, and section 665 of former Title 31, Money and Finance, repealed sections 1802, 1803, 1804, 1805, 1822, 1831, 1832, 1833, 1841, 1842, 1843, 1844, 1845, 1846, 1861, 1871, 1873, 1882, 1883, 1884, 1886, 1901, 1902, 1911, 1912, 1913, 1914, 1915, 1917, 1931, 1941, 1942, 1943, 1944, 1951, 1952, 1961, 1962, 1963, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, and 1991 of this title, and enacted provisions set out as notes under this section

and sections 160, 162, 1303, 1321, 1337, 1484, 1515, 1516, 1901, and 2271 of this title and section 301 of Title 13, Census.

REFERENCES TO OTHER LAWS DEEMED REFERENCES TO TRADE ACT OF 1974

Section 602(f) of Pub. L. 93–618, as amended by Pub. L. 96–39, title XI, §1106(h)(3), July 26, 1979, 93 Stat. 313, provided that: ''All provisions of law (other than this Act [this chapter], the Trade Expansion Act of 1962 [chapter 7 of this title], and the Trade Agreements Extension Act of 1951 [see Short Title of 1951 Amendment note set out under section 1654 of this title]), in effect after the date of enactment of this Act [Jan. 3, 1975], referring to section 350 of the Tariff Act of 1930 [section 1351 of this title], to that section as amended, to the Act entitled 'An Act to amend the Tariff Act of 1930,' approved June 12, 1934 [enacting sections 1352, 1353, and 1354 and amending section 1351 of this title], to that Act as amended or to the Trade Expansion Act of 1962, or to agreements entered into, or proclamations issued, or actions taken under any of such provisions, shall be construed, unless clearly precluded by the context, to refer also to this Act, or to agreements entered into or proclamations or orders issued pursuant to this Act.''

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–210, div. A, §101, Aug. 6, 2002, 116 Stat. 935, provided that: ''This division [enacting part 6 of subchapter II of this chapter, sections 1431a, 1583, and 2318 of this title, sections 35, 6050T, and 7527 of Title 26, Internal Revenue Code, and section 300gg–45 of Title 42, The Public Health and Welfare, amending sections 58c, 482, 1318, 1330, 1411, 1505, 1509, 2075, 2171, 2271 to 2273, 2275, 2291, 2293, 2295 to 2298, 2317, 2346, and 2395 of this title, sections 4980B, 6103, 6724, and 7213A of Title 26, sections 1165, 2862, 2918, and 2919 of Title 29, Labor, section 1324 of Title 31, Money and Finance, and section 300bb–5 of Title 42, renumbering section 35 of Title 26 as section 36 of Title 26, repealing sections 2318, 2322, and 2331 of this title, enacting provisions set out as notes preceding section 2271 and under sections 58c, 482, 1583, 1625, 1654, 2071, 2075, 2082, 2251, 2271, 2331, and 2401 of this title, sections 35 and 6050T of Title 26, and section 2918 of Title 29, and amending provisions set out as a note preceding section 2271 of this title] may be cited as the 'Trade Adjustment Assistance Reform Act of 2002'.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1951, Aug. 20, 1996, 110 Stat. 1917, provided that: ''This subtitle [subtitle J (§§1951–1954) of title I of Pub. L. 104–188, enacting sections 2461 to 2467 of this title, amending sections 2702, 3011, 3202, 3331, and 3551 of this title, section 1444–2 of Title 7, Agriculture, section 4711 of Title 15, Commerce and Trade, sections 262p–4p and 2191a of Title 22, Foreign Relations and Intercourse, and section 871 of Title 26, Internal Revenue Code, and enacting provisions set out as a note under section 2461 of this title] may be cited as the 'GSP Renewal Act of 1996'.''

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–182, title V, §501, Dec. 8, 1993, 107 Stat. 2149, provided that: ''This subtitle [subtitle A (§§501–507) of title V of Pub. L. 103–282, enacting sections 2322 and 2331 of this title, amending sections 2271 to 2273, 2275, 2317, and 2395 of this title, sections 3304 and 3306 of Title 26, Internal Revenue Code, and section 503 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under section 2331 of this title and section 3306 of Title 26, and amending provisions set out as a note preceding section 2271 of this title] may be cited as the 'NAFTA Worker Security Act'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–382, §1(a), Aug. 20, 1990, 104 Stat. 629, provided that: ''This Act [see Tables for classification] may be cited as the 'Customs and Trade Act of 1990'.''

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–221, §1, Dec. 12, 1989, 103 Stat. 1886, provided that: ''This Act [amending section 4611 of Title 26, Internal Revenue Code, enacting provisions set out as notes under sections 2253 and 2703 of this title and section 4611 of Title 26, and amending provisions set out as notes under sections 2253 and 2703 of this title] may be cited as the 'Steel Trade Liberalization Program Implementation Act'.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–272, title XIII, §13001, Apr. 7, 1986, 100 Stat. 300, provided that: ''This part [part 1 (§§13001–13009) of subtitle A, amending sections 2271, 2272, 2291 to 2293, 2296, 2297, 2311, 2317, 2319, 2341 to 2344, and 2346 of this title, enacting provisions set out as a note under section 2291 of this title, and amending provisions set out as a note preceding section 2271 of this title] may be cited as the 'Trade Adjustment Assistance Reform and Extension Act of 1986'.''

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–573, title III, §301(a), Oct. 30, 1984, 98 Stat. 3000, provided that: ''This title [enacting sections 2114a to 2114e, 2138, and 2241 of this title, amending sections 2112, 2114, 2155, 2171, and 2411 to 2415 of this title and sections 3101 to 3104 of Title 22, Foreign Relations and Intercourse, and enacting provisions set out as notes under section 2102 of this title and section 3101 of Title 22] may be cited as the 'International Trade and Investment Act'.''

Pub. L. 98–573, title V, §501(a), Oct. 30, 1984, 98 Stat. 3018, provided that: ''This title [enacting section 2466 of this title, amending sections 2461 to 2465 of this title, and enacting provisions set out as notes under section 2461 of this title] may be cited as the 'Generalized System of Preferences Renewal Act of 1984'.''

SEPARABILITY

Section 605 of Pub. L. 93–618 provided that: ''If any provision of this Act [see References in Text note above], or the application of any provision to any circumstances or persons shall be held invalid, the validity of the remainder of this Act, and of the application of such provision to other circumstances or persons, shall not be affected thereby.''

§ 2102. Congressional statement of purpose

The purposes of this chapter are, through trade agreements affording mutual benefits—

(1) to foster the economic growth of and full employment in the United States and to strengthen economic relations between the United States and foreign countries through open and nondiscriminatory world trade;

(2) to harmonize, reduce, and eliminate barriers to trade on a basis which assures substantially equivalent competitive opportunities for the commerce of the United States;

(3) to establish fairness and equity in international trading relations, including reform of the General Agreement on Tariffs and Trade;

(4) to provide adequate procedures to safeguard American industry and labor against unfair or injurious import competition, and to assist industries, firm,[1] workers, and communities to adjust to changes in international trade flows;

(5) to open up market opportunities for United States commerce in nonmarket economies; and

(6) to provide fair and reasonable access to products of less developed countries in the United States market.

[1] So in original.

(Pub. L. 93–618, § 2, Jan. 3, 1975, 88 Stat. 1981.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

STATEMENT OF PURPOSES OF 1984 AMENDMENT

Pub. L. 98–573, title III, § 302, Oct. 30, 1984, 98 Stat. 3000, provided that: ''The purposes of this title [see Short Title of 1984 Amendment note set out under section 2101 of this title] are—

''(1) to foster the economic growth of, and full employment in, the United States by expanding competitive United States exports through the achievement of commercial opportunities in foreign markets substantially equivalent to those accorded by the United States;

''(2) to improve the ability of the President—

''(A) to identify and to analyze barriers to (and restrictions on) United States trade and investment, and

''(B) to achieve the elimination of such barriers and restrictions;

''(3) to encourage the expansion of—

''(A) international trade in services through the negotiation of agreements (both bilateral and multilateral) which reduce or eliminate barriers to international trade in services, and

''(B) United States service industries in foreign commerce; and

''(4) to enhance the free flow of foreign direct investment through the negotiation of agreements (both bilateral and multilateral) which reduce or eliminate the trade distortive effects of certain investment-related measures.''

SUBCHAPTER I—NEGOTIATING AND OTHER AUTHORITY

PART 1—RATES OF DUTY AND OTHER TRADE BARRIERS

§ 2111. Basic authority for trade agreements

(a) Presidential authority to enter into agreement; modification or continuance of existing duties

Whenever the President determines that any existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes of this chapter will be promoted thereby, the President—

(1) during the 5-year period beginning on January 3, 1975, may enter into trade agreements with foreign countries or instrumentalities thereof; and

(2) may proclaim such modification or continuance of any existing duty, such continuance of existing duty-free or excise treatment, or such additional duties, as he determines to be required or appropriate to carry out any such trade agreement.

(b) Limitation on authority to decrease duty

(1) Except as provided in paragraph (2), no proclamation pursuant to subsection (a)(2) of this section shall be made decreasing a rate of duty to a rate below 40 percent of the rate existing on January 1, 1975.

(2) Paragraph (1) shall not apply in the case of any article for which the rate of duty existing on January 1, 1975, is not more than 5 percent ad valorem.

(c) Limitation on authority to increase duty

No proclamation shall be made pursuant to subsection (a)(2) of this section increasing any rate of duty to, or imposing a rate above, the higher of the following:

(1) the rate which is 50 percent above the rate set forth in rate column numbered 2 of the Tariff Schedules of the United States as in effect on January 1, 1975, or

(2) the rate which is 20 percent ad valorem above the rate existing on January 1, 1975.

(Pub. L. 93–618, title I, § 101, Jan. 3, 1975, 88 Stat. 1982.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

The Tariff Schedules of the United States, referred to in subsec. (c)(1), to be treated as a reference to the Harmonized Tariff Schedule pursuant to section 3012 of this title. The Harmonized Tariff Schedule is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

CHANGE OF NAME

The Office of the Special Representative for Trade Negotiations was redesignated the Office of the United States Trade Representative, and Special Representative for Trade Negotiations was redesignated the United States Trade Representative by Reorg. Plan No. 3 of 1979, § 1(a), (b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1–107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title. See, also, section 2171 of this title as amended by Pub. L. 97–456.

REORGANIZING AND RESTRUCTURING OF INTERNATIONAL TRADE FUNCTIONS OF UNITED STATES GOVERNMENT

Pub. L. 96–39, title XI, § 1109, July 26, 1979, 93 Stat. 413, provided that the President submit to the Congress, not later than July 10, 1979, a proposal to restructure the international trade functions of the Executive Branch of the United States Government, and directed, in order to ensure that the 96th Congress takes final action on a comprehensive reorganization of trade functions as soon as possible, that the appropriate committee of each House of the Congress give the proposal by the President immediate consideration and make its best efforts to take final committee action to reorganize and restructure the international trade functions of the United States Government by Nov. 10, 1979.

STUDY OF EXPORT TRADE POLICY

Pub. L. 96–39, title XI, § 1110, July 26, 1979, 93 Stat. 314, directed the President to review all export promotion functions of the executive branch and potential programmatic and regulatory disincentives to exports, and to submit to the Congress a report of that review not later than July 15, 1980, and not later than July 15, 1980, to submit to the Congress a study of the factors bearing on the competitive posture of United States producers and the policies and programs required to strengthen the relative competitive position of the United States in world markets.

PROC. NO. 4707. CARRYING OUT THE GENEVA (1979) PROTOCOL TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE AND FOR OTHER PURPOSES

Proc. No. 4707, Dec. 11, 1979, 44 F.R. 72348, as amended by Ex. Ord. No. 12204, Mar. 27, 1980, 45 F.R. 20740; Proc.

No. 4792, Sept. 15, 1980, 45 F.R. 61589; Proc. No. 4889, Dec. 29, 1981, 47 F.R. 1; Proc. No. 4904, Feb. 27, 1982, 47 F.R. 8753; Ex. Ord. No. 12354, Mar. 30, 1982, 47 F.R. 13477; Ex. Ord. No. 12371, July 12, 1982, 47 F.R. 30449; Ex. Ord. No. 12389, Oct. 25, 1982, 47 F.R. 47529; Ex. Ord. No. 12413, Mar. 30, 1983, 48 F.R. 13921; Proc. No. 5050, Apr. 15, 1983, 48 F.R. 16639; Ex. Ord. No. 12459, Jan. 16, 1984, 49 F.R. 2089; Ex. Ord. No. 12471, Mar. 30, 1984, 49 F.R. 13101; Ex. Ord. No. 12519, June 13, 1985, 50 F.R. 25037; Proc. No. 5365, Aug. 30, 1985, 50 F.R. 36220; Proc. No. 5452, Mar. 31, 1986, 51 F.R. 11539, provided:

1. Pursuant to Section 101(a) of the Trade Act of 1974 (19 U.S.C. 2111(a)), I determined that certain existing duties and other import restrictions of the United States and of foreign countries were unduly burdening and restricting the foreign trade of the United States and that one or more of the purposes stated in Section 2 of the Trade Act of 1974 (19 U.S.C. 2102) would be promoted by entering into the trade agreements identified in the third and fourth recitals of this proclamation.

2. Sections 131, 132, 133, 134, 135, and 161(b) of the Trade Act of 1974 (19 U.S.C. 2151, 2152, 2153, 2154, 2155, and 2211(b)) and Section 4(c) of Executive Order No. 11846 of March 27, 1975, (3 CFR 1971–1975 Comp. 974) [set out below], have been complied with.

3. Pursuant to Section 101(a)(1) of the Trade Act of 1974 (19 U.S.C. 2111(a)(1)), I, through my duly empowered representative, (1) on July 11, 1979, entered into a trade agreement with other contracting parties to the General Agreement on Tariffs and Trade (61 Stat. (pts. 5 and 6)), as amended (the General Agreement), with countries seeking to accede to the General Agreement, and the European Economic Community, which agreement consists of the Geneva (1979) Protocol to the General Agreement, including a schedule of United States concessions annexed thereto (hereinafter referred to as ''Schedule XX (Geneva-1979)''), a copy of which Geneva (1979) Protocol (including Schedule XX (Geneva-1979) annexed thereto) is annexed to this proclamation as Part 1 of Annex I [set out below], (2) on November 18, 1978, entered into a trade agreement with the Hungarian People's Republic, including a schedule of United States concessions annexed thereto, a copy of which agreement, and schedule, is annexed to this proclamation as Part 2 of Annex I [set out below], (3) on October 31, 1979, entered into a trade agreement with the United Mexican States, which agreement consists of an exchange of letters, one enclosing a schedule of United States concessions, a copy of which exchange of letters, including such enclosed schedule, is annexed to this proclamation as Part 3 of Annex I [set out below], and (4) on March 2, 1979, entered into a trade agreement with the Socialist Republic of Romania, which agreement consists of an exchange of letters, one enclosing a schedule of United States concessions, a copy of which exchange of letters, including such enclosed schedule, is annexed to this proclamation as Part 4 of Annex I [set out below], and on October 24, 1979, the American Institute in Taiwan entered into a trade agreement with the Coordination Council for North American Affairs (see the Taiwan Relations Act, Sections 4(b)(1), 6(a)(1), and 10(a), 93 Stat. 15, 17, and 18 [22 U.S.C. 3303(b)(1), 3305(a)(1), and 3309(a)], E.O. 12143, sections 1–203 and 1–204, 44 Fed. Reg. 37191) [former 22 U.S.C. 3301 note], which agreement consists of an exchange of letters, one enclosing a schedule of the United States concessions, a copy of which exchange of letters, including such enclosed schedule, is annexed to this proclamation as Part 5 of Annex I [set out below].

4. Pursuant to Section 102 of the Trade Act of 1974 (19 U.S.C. 2112), I have determined that barriers to (and other distortions of) international trade were unduly burdening and restricting the foreign trade of the United States, and, through the Special Representative for Trade Negotiations [now United States Trade Representative, see Change of Name note above] (the Special Representative [now Trade Representative]), I have consulted with the appropriate Committees of the Congress, notified the House of Representatives and the Senate of my intention to enter into the agreements identified in Section 2(c) of the Trade Agreements Act of 1979 (93 Stat. 148) [19 U.S.C. 2503(c)], transmitted to the Congress copies of such agreements (a copy of one of which agreements, with the Hungarian People's Republic, is annexed to this proclamation as Part 6 of Annex I [set out below]), together with a draft of an implementing bill and a statement of administrative action, and such implementing bill, approving the agreements and the proposed administrative action, has been enacted into law (Section 2(a) of the Trade Agreements Act of 1979 (93 Stat. 147) [19 U.S.C. 2503(a)]).

5. (a) Pursuant to Section 502 of the Trade Agreements Act of 1979 (93 Stat. 251) [Pub. L. 96–39, July 26, 1979], I have determined that appropriate concessions have been received from foreign countries under trade agreements entered into under Title I of the Trade Act of 1974 (19 U.S.C. 2111 et seq.);

(b) Pursuant to Section 601(a) of the Trade Agreements Act of 1979 (93 Stat. 267), I have determined that duty-free treatment for certain articles now classified in the items of the Tariff Schedules of the United States (19 U.S.C. 1202) (TSUS) [see Publication of Tariff Schedules note under section 1202 of this title] listed in, and certified pursuant to, Section 601(a)(2) of that Act (93 Stat. 267), will provide treatment comparable to that provided by foreign countries under the Agreement on Trade in Civil Aircraft;

(c) Pursuant to Section 503(a)(2)(A) of the Trade Agreements Act of 1979 (93 Stat. 251), I have determined, after providing interested parties an opportunity to comment, that each article identified in Annex IV to this proclamation [see note below] is not import sensitive;

(d) Pursuant to Section 855(a) of the Trade Agreements Act of 1979 (93 Stat. 295), I have determined that adequate reciprocal concessions have been received, under trade agreements entered into under the Trade Act of 1974 [this chapter], for the application of the rate of duty appearing in rate column numbered 1 on January 1, 1979, for the comparable item on a proof gallon basis in the case of alcoholic beverages classified in all items in subpart D of part 12 of schedule 1 of the TSUS, except items 168.09, 168.12, 168.43, 168.77, 168.81, 168.87, and 168.95 [see Publication of Tariff Schedules note under section 1202 of this title];

(e) Pursuant to Section 2(b)(2)(A) of the Trade Agreements Act of 1979 (93 Stat. 147) [19 U.S.C. 2503(b)(2)(A)], I have determined that obligations substantially the same as those applicable to developing countries set forth in the agreements listed in Section 2(c)(1), (2), (3), (4), and (5) of that Act (93 Stat. 148) [19 U.S.C. 2503(c)(1), (2), (3), (4), and (5)] will be observed in Taiwan.

6. Each modification of existing duty proclaimed herein which provides with respect to an article for a decrease in duty below the limitation specified in Sections 101(b)(1) or 109(a) of the Trade Act of 1974 (19 U.S.C. 2111(b)(1) or 2119(a)), and each modification of any other import restriction or tariff provision so proclaimed is authorized by one or more of the following provisions or statutes:

(a) Section 101(b)(2) of the Trade Act of 1974 (19 U.S.C. 2111(b)(2)), by virtue of the fact that the rate of duty existing on January 1, 1975, applicable to the article was not more than 5 percent ad valorem (or ad valorem equivalent);

(b) Section 109(b) of the Trade Act of 1974 (19 U.S.C. 2119(b)), by virtue of the fact that I have determined, pursuant to that section, that the decrease authorized by that section will simplify the computation of the amount of duty imposed with respect to the article;

(c) Sections 503(a)(2)(A) and 503(a)(3) to (6) of the Trade Agreements Act of 1979 (93 Stat. 251 and 252) [Pub. L. 96–39, July 26, 1979] by virtue of the fact that they permit departures from the staging provisions of Section 109(a) of the Trade Act of 1974 (19 U.S.C. 2119(a));

(d) Sections 502(a), 855(a), and 601(a) of the Trade Agreements Act of 1979 (93 Stat. 251, 295, and 267) by virtue of the authority in such sections for specified concessions based on reciprocity, but in the case of the last

such section only after the conditions for acceptance of the Agreement on Trade in Civil Aircraft, identified in Section 2(c)(10) of that Act (93 Stat. 148) [19 U.S.C. 2503(c)(10)], are fulfilled;

(e) Sections 505 through 513, inclusive, of the Trade Agreements Act of 1979 (93 Stat. 252–257) by virtue of the fact that they permit exceeding the limitations specified in Sections 101 or 109 of the Trade Act of 1974 (19 U.S.C. 2111 or 2119);

(f) Section 255 of the Trade Expansion Act of 1962 (19 U.S.C. 1885) by virtue of the fact that it permits termination of proclamations issued pursuant to authority contained in that act;

(g) Section 2(a) of the Trade Agreements Act of 1979 (93 Stat. 147) [19 U.S.C. 2503(a)] by virtue of its approval of the agreements identified in Section 2(c) of that Act (93 Stat. 148) [19 U.S.C. 2503(c)], and

(h) Section 304(a)(3)(J) of the Tariff Act of 1930 (19 U.S.C. 1304(a)(3)(J)) and Section 602(f) of the Trade Act of 1974 (19 U.S.C. 2101 note), by virtue of the fact that I have found that the effectiveness of the proviso to Section 304(a)(3)(J) [19 U.S.C. 1304(a)(3)(J)] with respect to the marking of articles provided for in headnote 2 of part 1 of schedule 2 of the TSUS [see Publication of Tariff Schedules note under section 1202 of this title] is required or appropriate to carry out the first agreement identified in the third recital of this proclamation.

7. In the case of each decrease in duty, including those of the type specified in clause (a) or (b) of the sixth recital of this proclamation, which involves the determination of the ad valorem equivalent of a specific or compound rate of duty, and in the case of each modification in the form of an import duty, the United States International Trade Commission determined, pursuant to Section 601(4) of the Trade Act of 1974 (19 U.S.C. 2481(4)) in accordance with Section 4(e) of Executive Order No. 11846 of March 27, 1975, (3 CFR 1971–1975 Comp. 973) [set out below], and at my direction, the ad valorem equivalent of the specific or compound rate, on the basis of the value of imports of the article concerned during a period determined by it to be representative, utilizing, to the extent practicable, the standards of valuation contained in Sections 402 and 402a of the Tariff Act of 1930 (19 U.S.C. 1401a and 1402) applicable to the article during such representative period.

8. Pursuant to the Trade Act of 1974 [this chapter] and the Trade Agreements Act of 1979 [see 19 U.S.C. 2501], I determine that the modification or continuance of existing duties or other import restrictions or the continuance of existing duty-free or excise treatment hereinafter proclaimed is required or appropriate to carry out the trade agreements identified in the third recital of this proclamation or one or more of the trade agreements identified in Section 2(c) of the Trade Agreements Act of 1979 (93 Stat. 148) [19 U.S.C. 2503(c)].

9. Following unsatisfactory negotiations with the European Economic Community under Articles XXIV:6 and XXVIII of the General Agreement regarding the maintenance by the European Economic Community of unreasonable import restrictions upon imports of poultry from the United States, the President, by Proclamation 3564 of December 4, 1963 (77 Stat. 1035), suspended certain United States tariff concessions; as a result of the reciprocal concessions contained in the Geneva (1979) Protocol to the General Agreement, I determine that the termination of such suspension of tariff concessions contained in Proclamation 3564 (except those applicable to automobile trucks valued at $1,000 or more (provided for in TSUS item 692.02) [see Publication of Tariff Schedules note under section 1202 of this title]) is required to carry out the General Agreement.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes, including but not limited to Title I and Section 604 of the Trade Act of 1974 [this subchapter and 19 U.S.C. 2483], Section 2 [19 U.S.C. 2503], and Titles V, VI, and VIII of the Trade Agreements Act of 1979 [Pub. L. 96–39, July 26, 1979] Section 255 of the Trade Expansion Act of 1962 [19 U.S.C. 1885], and Section 301 of Title 3 of the United States Code, do proclaim that:

(1) At the close of December 31, 1979, the suspension of tariff concessions contained in Proclamation 3564 (except those applicable to automobile trucks valued at $1,000 or more (provided for in TSUS item 692.02) [see Publication of Tariff Schedules note under section 1202 of this title]) shall terminate.

(2) The amendment to Section 466 of the Tariff Act of 1930 (19 U.S.C. 1466) provided for in Section 601(a)(3) of the Trade Agreements Act of 1979 (93 Stat. 268) shall be effective with respect to entries made under Section 466 on and after the date designated by the President under paragraph 5(b) of this proclamation.

(3) The rate of duty applicable to each item as to which the determination has been made in recital 5(d) is the rate of duty appearing in rate column numbered 1 on January 1, 1979, for the comparable item on a proof gallon basis or such rate as reduced under Section 101 of the Trade Act of 1974 (19 U.S.C. 2111).

(4) Subject to the provisions of the General Agreement, of the Geneva (1979) Protocol, of other agreements supplemental to the General Agreement, of the other agreements identified in recitals 3 and 4, and of United States law (including but not limited to provisions for more favorable treatment), the modification or continuance of existing duties or other import restrictions and the continuance of existing duty-free or excise treatment provided for in Schedule XX (Geneva-1979) (except those provided for in the items listed in Parts 1C, 1D, 2D, 2E, 2K, 3C, 3D, 4C, and 4D of Annex I to Schedule XX which are required to implement the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, and those provided for in Section 1, Chapter 4, Unit C, Note 2 (cheese quotas), and in Section 1, Chapter 10, Unit B, note 2 (chocolate quotas), all of which will be the subject of one or more separate proclamations), in the agreements identified in the third and fourth recitals of this proclamation, and in trade agreements legislation, shall become effective on or after January 1, 1980, as provided for herein.

(5) To this end—

(a) Except as provided for in subparagraph (b), the modifications to the TSUS made by Annex II, Section A of Annex III, and Sections B(1) through (4) of Annex IV of this proclamation [see note below] shall be effective with respect to articles entered, or withdrawn from warehouse, for consumption on and after the effective dates specified in those annexes;

(b) The modifications provided for in Section A of Annex II to this proclamation [see note below] which are authorized by Section 601(a) of the Trade Agreements Act of 1979 (93 Stat. 267) shall apply to articles entered, or withdrawn from warehouse, for consumption on and after the date designated by the President when he determines that the requirements of Section 2(b) of the Trade Agreements Act of 1979 (93 Stat. 147) [19 U.S.C. 2503(b)] have been met with respect to the Agreement on Trade in Civil Aircraft;

(c) The Special Representative [now Trade Representative] shall make any determinations relevant to the designation of the effective dates of the modifications of the TSUS made by Sections B through G of Annex III, and Sections B (5) through (10) of Annex IV of this proclamation, [see note below] and shall publish in the Federal Register the effective date with respect to each of the modifications made by these sections; such modifications shall apply to articles entered, or withdrawn from warehouse, for consumption on and after such effective date;

(d) The modifications to the TSUS made by Section C of Annex IV to this proclamation, [see note below] relating to special treatment for the least developed developing countries (LDDC's), shall be effective with respect to articles entered, or withdrawn from warehouse, for consumption on and after the effective dates as provided for in Section B of Annex IV [see note below]; whenever the rate of duty specified in the col-

umn numbered 1 for any TSUS item is reduced to the same level as the corresponding rate of duty specified in the column entitled ''LDDC'' for such item, the rate of duty in the column entitled ''LDDC'' shall be deleted from the TSUS, and when the duty rates for all such items in Annex IV [see note below] have been deleted, the modifications to the TSUS made by Section C of Annex IV to this proclamation [see note below] shall be deleted;

(e) Section A of Annex IV [see note below] shall become effective on January 1, 1980.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of December, in the year of our Lord nineteen hundred and seventy-nine, and of the Independence of the United States of America the two hundred and fourth.

JIMMY CARTER.

ANNEX I

TEXTS OF AGREEMENTS IDENTIFIED IN THE THIRD AND FOURTH RECITALS OF THIS PROCLAMATION[1]

Part 1	Geneva (1979) Protocol to the General Agreement on Tariffs and Trade (Including Schedules of Concessions)
Part 2	Trade Agreement with the People's Republic of Hungary Entered Into on November 18, 1979
Part 3	Trade Agreement with the United Mexican States Entered Into on October 31, 1979
Part 4	Trade Agreement with the Socialist Republic of Romania Entered Into on March 2, 1979
Part 5	Trade Agreement between the American Institute in Taiwan and the Coordination Council for North American Affairs Entered Into on October 24, 1979
Part 6	Agreement with the Hungarian People's Republic Entered Into on June 13, 1979

ANNEXES II TO IV

Annexes II to IV of Proclamation 4707, which amended the Tariff Schedules of the United States, are not set out under this section because the Tariff Schedules were not set out in the Code. The Tariff Schedules of the United States were replaced by the Harmonized Tariff Schedule of the United States which is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

PROC. NO. 4768. CARRYING OUT THE AGREEMENT ON IMPLEMENTATION OF ARTICLES VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE AND FOR OTHER PURPOSE

Proc. No. 4768, June 28, 1980, 45 F.R. 45135, as amended by Proc. No. 4792, Sept. 15, 1980, 45 F.R. 61589; Ex. Ord. No. 12311, §5, June 29, 1981, 46 F.R. 34305; Proc. No. 4904, Feb. 27, 1982, 47 F.R. 8753; Ex. Ord. No. 12354, Mar. 30, 1982, 47 F.R. 13477; Ex. Ord. No. 12413, Mar. 30, 1983, 48 F.R. 13921; Ex. Ord. No. 12471, Mar. 30, 1984, 49 F.R. 13101; Ex. Ord. No. 12519, June 13, 1985, 50 F.R. 25037; Proc. No. 5365, Aug. 30, 1985, 50 F.R. 36220; Proc. No. 5452, Mar. 31, 1986, 51 F.R. 11539, provided:

1. Pursuant to Section 204(a)(2) of the Trade Agreements Act of 1979 (93 Stat. 203) [19 U.S.C. 1401a note] in order to implement, beginning on July 1, 1980, the new customs valuation standards as provided in Title II of that Act [Pub. L. 96–39, July 26, 1979, 93 Stat. 194], and for other purposes, I make the following determinations, and do proclaim as hereinafter set forth.

2. Section 225 of the Trade Agreements Act of 1979 (93 Stat. 235) [Pub. L. 96–39, July 26, 1979], Sections 131, 132, 133, 134, 135, and 161(b) of the Trade Act of 1974 (19 U.S.C. 2151, 2152, 2153, 2154, 2155, and 2211(b)) and Section 4(c) of Executive Order No. 11846 of March 27, 1975, (3 CFR 1971–1975 Comp 974) [set out below], have been complied with.

3. Pursuant to Section 101(a) of the Trade Act of 1974 (19 U.S.C. 2111(a)) and having made the determinations required by that section with regard to the following trade agreements, I, through my duly empowered representative, (1) on July 11, 1979, entered into a trade agreement with other contracting parties to the General Agreement on Tariffs and Trade (61 Stat. (pts. 5 and 6)), as amended (the General Agreement), with countries seeking to accede to the General Agreement, and the European Communities, which agreement consists of the Geneva (1979) Protocol to the General Agreement, including a schedule of United States concessions annexed thereto (hereinafter referred to as ''Schedule XX (Geneva–1979)''), (2) on December 18, 1979, entered into a trade agreement with Switzerland, which agreement consists of an exchange of letters, a copy of which is annexed to this proclamation as Part 2 of Annex I, (3) on December 21 and 27, 1979, and on January 2, 1980, entered into trade agreements with the European Communities, which agreements consists of joint memoranda, copies of which are annexed to this proclamation as Part 3 of Annex I, (4) on January 2, 1980, entered into a trade agreement with the Dominican Republic, which agreement consists of an exchange of letters, a copy of which is annexed to this proclamation as Part 4 of Annex I, and (5) on December 29, 1979, entered into a trade agreement with Indonesia, which agreement consists of a memorandum and an exchange of letters, copies of which are annexed to this proclamation as Part 5 of Annex I.

4. After having complied with Section 102 of the Trade Act of 1974 (19 U.S.C. 2112), and having made the required determinations, I notified Congress of my intention to enter into the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (a copy of which is annexed to this proclamation as Part 1 of Annex I); and an implementing bill, approving the agreement and the proposed administrative action, has been enacted into law (Section 2(a) of the Trade Agreements Act of 1979 (93 Stat. 147) [19 U.S.C. 2503(a)]).

5. (a) Pursuant to Section 2(b)(3) of the Trade Agreements Act of 1979 (93 Stat. 147) [19 U.S.C. 2503(b)(3)], I determine (1) that each major industrial country, as defined therein, with the exception of Canada, is accepting the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, (2) that the acceptance of this Agreement by Canada is not essential to the effective operation of the Agreement, (3) that a significant portion of United States trade will benefit from the Agreement, notwithstanding such nonacceptance, and (4) that it is in the national interest of the United States to accept the Agreement (and have so reported to the Congress);

(b) Pursuant to Section 204(a)(2)(A) and (B) of the Trade Agreements Act of 1979 (93 Stat. 203) [19 U.S.C. 1401a note], I determine that the European Communities (including the European Economic Community) have accepted the obligations of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade with respect to the United States and each of the member states of the European Communities has implemented the Agreement under its laws (effective July 1, 1980);

(c) Pursuant to Section 503(a)(1) of the Trade Agreements Act of 1979 (93 Stat. 251) [Pub. L. 96–39, July 26, 1979], I determine, after interested parties were provided an opportunity to comment, that the articles classifiable in the following new items of the Tariff

[1] Not printed in the Federal Register. The text of the Geneva (1979) Protocol to the General Agreement in part 1 of Annex I has been printed by the Contracting Parties to the General Agreement on Tariffs and Trade in four volumes entitled Geneva (1979) Protocol to the General Agreements on Tariffs and Trade. The Agreement with the Hungarian People's Republic in part 6 of Annex I has been printed in House Document 96–153, vol. 1, p. 703. The general provisions of all the agreements in parts 1 to 6 of annex I, but not schedules of concessions by other parties, will be printed in the Customs Bulletin. The texts of all these agreements will be printed in Treaties and Other International Acts Series, and in the bound volumes of United States Treaties and Other International Agreements.

Schedules of the United States (TSUS) (19 U.S.C. 1202) [see Publication of Tariff Schedules note set out under section 1202 of this title], added thereto by Annex II to this proclamation, were not imported into the United States before January 1, 1978, and were not produced in the United States before May 1, 1978:

[Table of new items deleted]

(d) Pursuant to Section 503(a)(2)(A) of the Trade Agreements Act of 1979 (93 Stat. 251), I determine, after providing interested parties an opportunity to comment, that each article identified in Annex IV to this proclamation is not import sensitive.

6. Each modification of existing duty proclaimed herein which provides with respect to an article for a decrease in duty below the limitation specified in Sections 101(b)(1) or 109(a) of the Trade Act of 1974 (19 U.S.C. 2111(b)(1) or 2119(a)), and each modification of any other import restriction or tariff provision so proclaimed is authorized by one or more of the following provisions or statutes:

(a) Section 101(b)(2) of the Trade Act of 1974 (19 U.S.C. 2111(b)(2)), by virtue of the fact that the rate of duty existing on January 1, 1975, applicable to the article was not more than 5 percent ad valorem (or ad valorem equivalent);

(b) Section 109(b) of the Trade Act of 1974 (19 U.S.C. 2119(b)), by virtue of the fact that I have determined, pursuant to that section, that the decrease authorized by that section will simplify the computation of the amount of duty imposed with respect to the article; and

(c) The Trade Agreements Act of 1979 (93 Stat. 144 et seq.) [see 19 U.S.C. 2501] including, but not limited to, Sections 503(a)(1), (2)(A) and (6) (93 Stat. 251 and 252) [Pub. L. 96–39, July 26, 1979] by virtue of the fact that they permit departures from the staging provisions of Section 109(a) of the Trade Act of 1974 (19 U.S.C. 2119(a)).

7. In the case of each decrease in duty, including those of the type specific in clause (a) or (b) of the sixth recital of this proclamation, which involves the determination of the ad valorem equivalent of a specified or compound rate of duty, and in the case of each modification in the form of an import duty, the United States International Trade Commission has determined, pursuant to Section 601(4) of the Trade Act of 1974 (19 U.S.C. 2481(4)), in accordance with Section 4(e) of Executive Order No. 11846 of March 27, 1975 (3 CFR 1971–1975 Comp. 973) [set out below], and at my direction, the ad valorem equivalent of the specific or compound rate, on the basis of the value of imports of the article concerned during a period determined by it to be representative, utilizing, to the extent practicable, the standards of valuation contained in Sections 402 and 402a of the Tariff Act of 1930 (19 U.S.C. 1401a and 1402) applicable to the article during such representative period.

8. Pursuant to the Trade Act of 1974 [this chapter] and the Trade Agreements Act of 1979 [see 19 U.S.C. 2501], I determine that each modification or continuance of existing duties or other import restrictions and each continuance of existing duty-free or excise treatment hereinafter proclaimed is required or appropriate to carry out the trade agreements identified in the third recital of this proclamation or the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes, including but not limited to Title I and Section 604 of the Trade Act of 1974 [this subchapter and 19 U.S.C. 2483], Section 2 [19 U.S.C. 2503] and Titles II and V of the Trade Agreements Act of 1979 [Pub. L. 96–39, July 26, 1979], and Section 301 of Title 3 of the United States Code, do proclaim that:

(1)(a) The valuation standards amendments made by Title II of the Trade Agreements Act of 1979 (93 Stat. 194 et seq.) to Sections 402 and 402a of the Tariff Act of 1930 (19 U.S.C. 1401a and 4102), and

(b) subject to the provisions of the General Agreement, of the Geneva (1979) Protocol, of other agreements supplemental to the General Agreement, of the other agreements identified in recitals 3 and 4, and of United States Law (including but not limited to provisions for more favorable treatment),—

(i) the modification or continuance of existing duties or other import restrictions, and

(ii) the continuance of existing duty-free or excise treatment provided for in these agreements and in trade agreements legislation, shall become effective on or after July 1, 1980, as provided for herein.

(2) To this end—

(a) The amendments made by Title II of the Trade Agreements Act of 1979 (93 Stat. 194 et seq.), except amendments made by section 223(b) [see Effective Date of 1979 Amendment note set out under section 1401a of this title], shall be effective with respect to articles exported to the United States on and after July 1, 1980;

(b) The TSUS is modified as provided in Annexes II, III and IV of the proclamation;

(c) The modifications to the TSUS made by Sections A and C of Annex II, and Section A of Annex III, of this proclamation shall be effective with respect to articles exported to the United States on and after the effective dates specified in those annexes;

(d) The modifications to the TSUS made by Sections B, D and E of Annex II, Section B of Annex III, and Sections A and B of Annex IV, of this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on and after the effective dates specified in those annexes;

(e) The United States Trade Representative shall make the necessary determinations relevant to the designation of the effective dates of the modifications of the TSUS made by Sections F and G of Annex II and Section C of Annex III to this proclamation, and shall publish in the Federal Register the effective date with respect to each of the modifications made by these sections; such modifications shall apply to articles entered, or withdrawn from warehouse for consumption, on and after such effective date;

(f) With respect to the modifications to the TSUS made by Annex IV to this proclamation and Annex IV to Presidential Proclamation 4707 of December 11, 1979 [see note above], relating to special treatment for the least developed developing countries (LDDC's), whenever the rate of duty specified in the column numbered 1 for any TSUS item is reduced to the same level as the corresponding rate of duty specified in the column entitled ''LDDC'' for such item, or to a lower level, the rate of duty in the column entitled ''LDDC'' shall be deleted from the TSUS;

(g) Annexes III and IV of Presidential Proclamation 4707 of December 11, 1979 [see note above], are superseded to the extent inconsistent with this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of June, in the year of our Lord nineteen hundred and eighty, and of the Independence of the United States of America the two hundred and fourth.

JIMMY CARTER.

ANNEXES I TO IV

Annexes I to IV of Proclamation 4768, which amended the Tariff Schedules of the United States, are not set out under this section because the Tariff Schedules were not set out in the Code. The Tariff Schedules of the United States were replaced by the Harmonized Tariff Schedule of the United States which is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

EX. ORD. NO. 11846. ADMINISTRATION OF TRADE AGREEMENTS PROGRAM

Ex. Ord. No. 11846, Mar. 27, 1975, 40 F.R. 14291, as amended by Ex. Ord. No. 11894, Jan. 3, 1976, 41 F.R. 1041;

Ex. Ord. No. 11947, Nov. 8, 1976, 41 F.R. 49799; Ex. Ord. No. 12102, Nov. 17, 1978, 43 F.R. 54197; Ex Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673; Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 989; Ex. Ord. No. 13277, § 4, Nov. 19, 2002, 67 F.R. 70306, provided:

By virtue of the authority vested in me by the Trade Act of 1974, hereinafter referred to as the Act (Public Law 93–618, 88 Stat. 1978) [this chapter], the Trade Expansion Act of 1962, as amended (19 U.S.C. 1801), Section 350 of the Tariff Act of 1930, as amended (19 U.S.C. 1351), and Section 301 of Title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. *The Trade Agreements Program.*

The ''trade agreements program'' includes all activities consisting of, or related to, the negotiation or administration of international agreements which primarily concern trade and which are concluded pursuant to the authority vested in the President by the Constitution, Section 350 of the Tariff Act of 1930 [section 1351 of this title], as amended, the Trade Expansion Act of 1962, as amended [section 1801 et seq. of this title], Divisions B [19 U.S.C. 3801 et seq.] and C of the Trade Act of 2002 [div. C of Pub. L. 107–210, see Short Title of 2002 Amendment note set out under section 3201 of this title],,[sic] or the Act [this chapter].

SEC. 2. *The Special Representative for Trade Negotiations* [now United States Trade Representative, see Change of Name note above].

(a) The Special Representative for Trade Negotiations [now United States Trade Representative], hereinafter referred to as the Special Representative [now Trade Representative], in addition to the functions conferred upon him by the Act [this chapter], including Section 141 thereof [section 2171 of this title], and in addition to the functions and responsibilities set forth in this Order, shall be responsible for such other functions as the President may direct.

(b) [Revoked by Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 989.]

(c) The Special Representative [now Trade Representative] shall prepare, for the President's transmission to Congress, the annual report on the trade agreements program required by Section 163(a) of the Act [section 2213(a) of this title]. At the request of the Special Representative [now Trade Representative], other agencies shall assist in the preparation of that report.

(d) The Special Representative [now Trade Representative], except where expressly otherwise provided or prohibited by statute, Executive order, or instructions of the President, shall be responsible for the proper administration of the trade agreements program, and may, as he deems necessary, assign to the head of any Executive agency or body the performance of his duties which are incidental to the administration of the trade agreements program.

(e) The Special Representative [now Trade Representative] shall consult with the Trade Policy Committee in connection with the performance of his functions, including those established or delegated by this Order and shall, as appropriate, consult with other Federal agencies or bodies. With respect to the performance of his functions under Title IV of the Act [section 2431 et seq. of this title], including those established or delegated by this Order, the Special Representative [now Trade Representative] shall also consult with the East-West Foreign Trade Board [abolished].

(f) The Special Representative [now Trade Representative] shall be responsible for the preparation and submission of any Proclamation which relates wholly or primarily to the trade agreements program. Any such Proclamation shall be subject to all the provisions of Executive Order No. 11030, as amended [set out under section 1505 of Title 44, Public Printing and Documents] except that such Proclamation need not be submitted to the Director of the Office of Management and Budget.

(g) The Secretary of State shall advise the Special Representative [now Trade Representative], and the Committee, on the foreign policy implications of any action under the trade agreements program. The Special Representative [now Trade Representative] shall invite appropriate departments to participate in trade negotiations of particular interest to such departments, and the Department of State shall participate in trade negotiations which have a direct and significant impact on foreign policy.

SEC. 3. *The Trade Policy Committee.*

(a) [Revoked by Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 989.]

(b) The Committee shall have the functions conferred by the Trade Expansion Act of 1962, as amended [section 1801 et seq. of this title], upon the inter-agency organization referred to in Section 242 thereof, as amended [section 1872 of this title], the functions delegated to it by the provisions of this Order, and such other functions as the President may from time to time direct. Recommendations and advice of the Committee shall be submitted to the President by the Chairman.

(c) The Special Representative [now Trade Representative] or any other officer who is chief representative of the United States in a negotiation in connection with the trade agreements program shall keep the Committee informed with respect to the status and conduct of negotiations and shall consult with the Committee regarding the basic policy issues arising in the course of negotiations.

(d) Before making recommendations to the President under Section 242(b)(2) of the Trade Expansion Act of 1962, as amended [section 1872(b)(2) of this title], the Committee shall, through the Special Representative [now Trade Representative], request the advice of the Adjustment Assistance Coordinating Committee, established by Section 281 of the Act [section 2392 of this title].

(e), (f) [Revoked by Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 989.]

(g) The Trade Expansion Act Advisory Committee established by Section 4 of Executive Order No. 11075 of January 15, 1963, is abolished and all of its records are transferred to the Trade Policy Committee.

SEC. 4. *Trade Negotiations Under Title I of the Act.*

(a) The functions of the President under Section 102 of the Act [section 2112 of this title] concerning notice to, and consultation with, Congress, in connection with agreements on nontariff barriers to, and other distortions of, trade, are hereby delegated to the Special Representative [now Trade Representative].

(b) The Special Representative [now Trade Representative], after consultation with the Committee, shall prepare, for the President's transmission to Congress, all proposed legislation and other documents necessary or appropriate for the implementation of, or otherwise required in connection with, trade agreements; provided, however, that where implementation of an agreement on nontariff barriers to, and other distortions of, trade requires a change in a domestic law, the department or agency having the primary interest in the administration of such domestic law shall prepare and transmit to the Special Representative [now Trade Representative] the proposed legislation necessary or appropriate for such implementation.

(c) The functions of the President under Section 131(a) of the Act [section 2151(a) of this title], with respect to publishing and furnishing to the International Trade Commission lists of articles, are delegated to the Special Representative [now Trade Representative]. The functions of the President under Section 131(c) of the Act [section 2151(c) of this title] with respect to advice of the International Trade Commission and under Section 132 of the Act [section 2152 of this title] with respect to advice of the departments of the Federal Government and other sources, are delegated to the Special Representative [now Trade Representative]. The functions of the President under Section 133 of the Act [section 2153 of this title] with respect to public hearings in connection with certain trade negotiations are delegated to the Special Representative [now Trade Representative], who shall designate an interagency committee to hold and conduct any such hearings.

(d) The functions of the President under Section 135 of the Act [section 2155 of this title] with respect to advisory committees and, notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (86 Stat. 770, 5 U.S.C. App.), except that of reporting annually to Congress, which are applicable to advisory committees under the Act [this chapter] are delegated to the Special Representative [now Trade Representative]. In establishing and organizing general policy advisory committees or sector advisory committees under Section 135(c) of the Act [section 2155(c) of this title], the Special Representative [now Trade Representative] shall act through the Secretaries of Commerce, Labor and Agriculture, as appropriate.

(e) The functions of the President with respect to determining ad valorem amounts and equivalents pursuant to Sections 601(3) and (4) of the Act [section 2481(3) and (4) of this title] are hereby delegated to the Special Representative [now Trade Representative]. The International Trade Commission is requested to advise the Special Representative [now Trade Representative] with respect to determining such ad valorem amounts and equivalents. The Special Representative [now Trade Representative] shall seek the advice of the Commission and consult with the Committee with respect to the determination of such ad valorem amounts and equivalents.

(f) Advice of the International Trade Commission under Section 131 of the Act [section 2151 of this title], and other advice or reports by the International Trade Commission to the President or the Special Representative [now Trade Representative], the release or disclosure of which is not specifically authorized or required by law, shall not be released or disclosed in any manner or to any extent not specifically authorized by the President or by the Special Representative [now Trade Representative].

(g) All reports, findings, advice, determinations, hearing transcripts, briefs, and information which, under the terms of the Act [this chapter], the International Trade Commission is required to furnish to the President shall be transmitted to the President through the Special Representative [now Trade Representative].

SEC. 5. *Import Relief and Market Disruption.*

(a) The Special Representative [now Trade Representative] is authorized to request from the International Trade Commission the information specified in Sections 202(d) and 203(i)(1) and (2) of the Act [sections 2252(d) and 2253(i)(1) and (2) of this title].

(b) The Secretary of the Treasury, in consultation with the Secretary of Commerce or the Secretary of Agriculture, as appropriate, is authorized to issue, under Section 203(g) of the Act [section 2253(g) of this title], regulations governing the administration of any quantitative restrictions proclaimed in order to provide import relief and is authorized to issue, under Section 203(g) of the Act or 352(b) of the Trade Expansion Act of 1962 [section 1982(b) of this title], regulations governing the entry, or withdrawal from warehouses for consumption, of articles pursuant to any orderly marketing agreement.

(c) The Secretary of Commerce shall exercise primary responsibility for monitoring imports under any orderly marketing agreement.

SEC. 6. [Revoked by Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 989.]

SEC. 7. *East-West Foreign Trade Board* [abolished].

(a) In accordance with Section 411 of the Act [section 2441 of this title], there is hereby established the East-West Foreign Trade Board [abolished], hereinafter referred to as the Board. The Board shall be composed of the following members and such additional members of the Executive branch as the President may designate:

(1) The Secretary of State.

(2) The Secretary of the Treasury.

(3) The Secretary of Defense.

(4) The Secretary of Agriculture.

(5) The Secretary of Commerce.

(6) The Special Representative for Trade Negotiations [now United States Trade Representative].

(7) The Director of the Office of Management and Budget.

(8) The Chairman of the Council of Economic Advisers.

(9) The President of the Export-Import Bank of the United States.

(10) [Deleted by Ex. Ord. No. 12102.]

The President shall designate the Chairman and the Deputy Chairman of the Board. The President may designate an Executive Secretary, who shall be Chairman of a working group which will include membership from the agencies represented on the Board.

(b) The Board shall perform such functions as are required by Section 411 of the Act [section 2441 of this title] and such other functions as the President may direct.

(c) The Board is authorized to promulgate such rules and regulations as are necessary or appropriate to carry out its responsibilities under the Act [this chapter] and this Order.

(d) The Secretary of State shall advise the President with respect to determinations required to be made in connection with Sections 402 and 409 of the Act (dealing with freedom of emigration) [sections 2432 and 2439 of this title] and Section 403 (dealing with United States personnel missing in action in Southeast Asia) [section 2433 of this title], and shall prepare, for the President's transmission to Congress, the reports and other documents required by Sections 402 and 409 of the Act.

(e) The President's Committee on East-West Trade Policy, established by Executive Order No. 11789 of June 25, 1974, as amended by Section 6(d) of Executive Order No. 11808 of September 30, 1974, is abolished and all of its records are transferred to the Board.

SEC. 8. *Generalized System of Preferences.*

(a) The Special Representative [now Trade Representative], in consultation with the Secretary of State, shall be responsible for the administration of the generalized system of preferences under Title V of the Act [section 2461 et seq. of this title].

(b) The Committee, through the Special Representative [now Trade Representative], shall advise the President as to which countries should be designated as beneficiary developing countries, and as to which articles should be designated as eligible articles for the purposes of the system of generalized preferences.

(c) The Committee, through the Special Representative [now Trade Representative], shall perform the functions of the President specified in Section 503(a) of the Act [section 2463(a) of this title], with respect to publishing and furnishing to the International Trade Commission lists of articles that may be considered for designation as eligible articles for purposes of the Generalized System of Preferences.

(d) The Committee, through the Special Representative [now Trade Representative], to the extent necessary to determine the applicability of the provisions of Section 504(d) of the Act [section 2464(d) of this title] to any eligible article, shall perform the functions of the President under Section 332(g) of the Tariff Act of 1930, as amended [section 1332(g) of this title], with respect to requests for investigations by, and reports from, the International Trade Commission.

SEC. 9. *Prior Executive Orders.*

(a) Executive Order No. 11789 of June 25, 1974, and Section 6(d) of Executive Order No. 11808 of September 30, 1974, relating to the President's Committee on East-West Trade Policy are hereby revoked.

(b)(1) Sections 5(b), 7, and 8 of Executive Order No. 11075 of January 15, 1963, are hereby revoked effective April 3, 1975; (2) the remainder of Executive Order No. 11075, and Executive Order No. 11106 of April 18, 1963 and Executive Order No. 11113 of June 13, 1963, are hereby revoked.

§ 2112. Barriers to and other distortions of trade

(a) Congressional findings; directives; disavowal of prior approval of legislation

The Congress finds that barriers to (and other distortions of) international trade are reducing the growth of foreign markets for the products of United States agriculture, industry, mining, and commerce, diminishing the intended mutual benefits of reciprocal trade concessions, adversely affecting the United States economy, preventing fair and equitable access to supplies, and preventing the development of open and nondiscriminatory trade among nations. The President is urged to take all appropriate and feasible steps within his power (including the full exercise of the rights of the United States under international agreements) to harmonize, reduce, or eliminate such barriers to (and other distortions of) international trade. The President is further urged to utilize the authority granted by subsection (b) of this section to negotiate trade agreements with other countries and instrumentalities providing on a basis of mutuality for the harmonization, reduction, or elimination of such barriers to (and other distortions of) international trade. Nothing in this subsection shall be construed as prior approval of any legislation which may be necessary to implement an agreement concerning barriers to (or other distortions of) international trade.

(b) Presidential determinations prerequisite to entry into trade agreements; trade with Israel

(1) Whenever the President determines that any barriers to (or other distortions of) international trade of any foreign country or the United States unduly burden and restrict the foreign trade of the United States or adversely affect the United States economy, or that the imposition of such barriers is likely to result in such a burden, restriction, or effect, and that the purposes of this chapter will be promoted thereby, the President, during the 13-year period beginning on January 3, 1975, may enter into trade agreements with foreign countries or instrumentalities providing for the harmonization, reduction, or elimination of such barriers (or other distortions) or providing for the prohibition of or limitations on the imposition of such barriers (or other distortions).

(2)(A) Trade agreements that provide for the elimination or reduction of any duty imposed by the United States may be entered into under paragraph (1) only with Israel.

(B) The negotiation of any trade agreement entered into under paragraph (1) with Israel that provides for the elimination or reduction of any duty imposed by the United States shall take fully into account any product that benefits from a discriminatory preferential tariff arrangement between Israel and a third country if the tariff preference on such product has been the subject of a challenge by the United States Government under the authority of section 2411 of this title and the General Agreement on Tariffs and Trade.

(C) Notwithstanding any other provision of this section, the requirements of subsections (c) and (e)(1) of this section shall not apply to any trade agreement entered into under paragraph (1) with Israel that provides for the elimination or reduction of any duty imposed by the United States.

(3) Notwithstanding any other provision of law, no trade benefit shall be extended to any country by reason of the extension of any trade benefit to another country under a trade agreement entered into under paragraph (1) with such other country that provides for the elimination or reduction of any duty imposed by the United States.

(4)(A) Notwithstanding paragraph (2), a trade agreement that provides for the elimination or reduction of any duty imposed by the United States may be entered into under paragraph (1) with any country other than Israel if—

(i) such country requested the negotiation of such an agreement, and

(ii) the President, at least 60 days prior to the date notice is provided under subsection (e)(1) of this section—

(I) provides written notice of such negotiations to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and

(II) consults with such committees regarding the negotiation of such agreement.

(B) The provisions of section 2191 of this title shall not apply to an implementing bill (within the meaning of section 2191(b) of this title) if—

(i) such implementing bill contains a provision approving of any trade agreement which—

(I) is entered into under this section with any country other than Israel, and

(II) provides for the elimination or reduction of any duty imposed by the United States, and

(ii) either—

(I) the requirements of subparagraph (A) were not met with respect to the negotiation of such agreement, or

(II) the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives disapproved of the negotiation of such agreement before the close of the 60-day period which begins on the date notice is provided under subparagraph (A)(ii)(I) with respect to the negotiation of such agreement.

(C) The 60-day period described in subparagraphs (A)(ii) and (B)(ii)(II) shall be computed without regard to—

(i) the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(ii) any Saturday and Sunday, not excluded under clause (i), when either House of Congress is not in session.

(c) Presidential consultation with Congress prior to entry into trade agreements

Before the President enters into any trade agreement under this section providing for the harmonization, reduction, or elimination of a barrier to (or other distortion of) international trade, he shall consult with the Committee on Ways and Means of the House of Representa-

tives, the Committee on Finance of the Senate, and with each committee of the House and the Senate and each joint committee of the Congress which has jurisdiction over legislation involving subject matters which would be affected by such trade agreement. Such consultation shall include all matters relating to the implementation of such trade agreement as provided in subsections (d) and (e) of this section. If it is proposed to implement such trade agreement, together with one or more other trade agreements entered into under this section, in a single implementing bill, such consultation shall include the desirability and feasibility of such proposed implementation.

(d) Submission to Congress of agreements, drafts of implementing bills, and statements of proposed administrative action

Whenever the President enters into a trade agreement under this section providing for the harmonization, reduction, or elimination of a barrier to (or other distortion of) international trade, he shall submit such agreement, together with a draft of an implementing bill (described in section 2191(b) of this title) and a statement of any administrative action proposed to implement such agreement, to the Congress as provided in subsection (e) of this section, and such agreement shall enter into force with respect to the United States only if the provisions of subsection (e) of this section are complied with and the implementing bill submitted by the President is enacted into law.

(e) Steps prerequisite to entry into force of trade agreements

Each trade agreement submitted to the Congress under this subsection shall enter into force with respect to the United States if (and only if)—

(1) the President, not less than 90 days before the day on which he enters into such trade agreement, notifies the House of Representatives and the Senate of his intention to enter into such an agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(2) after entering into the agreement, the President transmits a document to the House of Representatives and to the Senate containing a copy of the final legal text of such agreement together with—

(A) a draft of an implementing bill and a statement of any administrative action proposed to implement such agreement, and an explanation as to how the implementing bill and proposed administrative action change or affect existing law, and

(B) a statement of his reasons as to how the agreement serves the interests of United States commerce and as to why the implementing bill and proposed administrative action is required or appropriate to carry out the agreement; and

(3) the implementing bill is enacted into law.

(f) Obligations imposed upon foreign countries or instrumentalities receiving benefits under trade agreements

To insure that a foreign country or instrumentality which receives benefits under a trade agreement entered into under this section is subject to the obligations imposed by such agreement, the President may recommend to Congress in the implementing bill and statement of administrative action submitted with respect to such agreement that the benefits and obligations of such agreement apply solely to the parties to such agreement, if such application is consistent with the terms of such agreement. The President may also recommend with respect to any such agreement that the benefits and obligations of such agreement not apply uniformly to all parties to such agreement, if such application is consistent with the terms of such agreement.

(g) Definitions

For purposes of this section—

(1) the term ''barrier'' includes—

(A) the American selling price basis of customs evaluation as defined in section 1401a or 1402 of this title, as appropriate, and

(B) any duty or other import restriction;

(2) the term ''distortion'' includes a subsidy; and

(3) the term ''international trade'' includes—

(A) trade in both goods and services, and

(B) foreign direct investment by United States persons, especially if such investment has implications for trade in goods and services.

(Pub. L. 93–618, title I, § 102, Jan. 3, 1975, 88 Stat. 1982; Pub. L. 96–39, title XI, §§ 1101, 1106(c)(1), July 26, 1979, 93 Stat. 307, 311; Pub. L. 98–573, title III, § 307(a), title IV, § 401(a)–(c)(1), Oct. 30, 1984, 98 Stat. 3012, 3013–3015; Pub. L. 99–47, § 8(b)(1), June 11, 1985, 99 Stat. 84; Pub. L. 99–514, title XVIII, § 1887(a)(1), Oct. 22, 1986, 100 Stat. 2923.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1), was in the original ''this Act'', meaning Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

Section 1402 of this title, referred to in subsec. (g)(1)(A), was repealed by Pub. L. 96–39.

AMENDMENTS

1986—Subsec. (b)(4)(B)(ii)(II). Pub. L. 99–514 substituted ''subparagraph'' for ''subsection''.

1985—Subsec. (b)(3). Pub. L. 99–47 inserted ''that provides for the elimination or reduction of any duty imposed by the United States'' after ''such other country''.

1984—Subsec. (b). Pub. L. 98–573, § 401(a), designated existing provisions as par. (1) and added pars. (2) to (4).

Subsec. (g)(1). Pub. L. 98–573, § 401(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (g)(3). Pub. L. 98–573, § 307(a), designated existing provisions as subpar. (A) and added subpar. (B).

1979—Subsec. (b). Pub. L. 96–39, § 1101, substituted ''13-year period'' for ''5-year period''.

Subsec. (e)(2). Pub. L. 96–39, § 1106(c)(1), substituted ''copy of the final legal text of such agreement'' for ''copy of such agreement''.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment of subsec. (b) of this section by section 1101 of Pub. L. 96–39 effective July 26, 1979, see section 1114 of Pub. L. 96–39, set out as an Effective Date note under section 2581 of this title.

Section 1106(c)(1) of Pub. L. 96–39 provided in part that the amendment of subsec. (e)(2) of this section by section 1106(c)(1) of Pub. L. 96–39 shall apply with respect to trade agreements submitted to the Congress under this section after July 26, 1979.

PROTECTIVE ORDER PROVISIONS APPLICABLE WITH RESPECT TO COUNTERVAILING AND ANTIDUMPING DUTY INVESTIGATIONS INVOLVING PRODUCTS OF CANADIAN ORIGIN

Pub. L. 101–382, title I, §135(c), Aug. 20, 1990, 104 Stat. 652, provided that: ''For purposes of section 404 of the United States-Canada Free-Trade Agreement Implementation Act of 1988 [Pub. L. 100–449, set out in a note below], the amendments made by subsection (b) [amending section 1677f of this title] also apply with respect to investigations under title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.] involving products of Canadian origin.''

UNITED STATES-JORDAN FREE TRADE AREA IMPLEMENTATION

Pub. L. 107–43, Sept. 28, 2001, 115 Stat. 243, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'United States-Jordan Free Trade Area Implementation Act'.

''SEC. 2. PURPOSES.

''The purposes of this Act are—

''(1) to implement the agreement between the United States and Jordan establishing a free trade area;

''(2) to strengthen and develop the economic relations between the United States and Jordan for their mutual benefit; and

''(3) to establish free trade between the 2 nations through the removal of trade barriers.

''SEC. 3. DEFINITIONS.

''For purposes of this Act:

''(1) AGREEMENT.—The term 'Agreement' means the Agreement between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area, entered into on October 24, 2000.

''(2) HTS.—The term 'HTS' means the Harmonized Tariff Schedule of the United States.

''TITLE I—TARIFF MODIFICATIONS; RULES OF ORIGIN

''SEC. 101. TARIFF MODIFICATIONS.

''(a) TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.—The President may proclaim—

''(1) such modifications or continuation of any duty;

''(2) such continuation of duty-free or excise treatment; or

''(3) such additional duties,

as the President determines to be necessary or appropriate to carry out article 2.1 of the Agreement and the schedule of duty reductions with respect to Jordan set out in Annex 2.1 of the Agreement.

''(b) OTHER TARIFF MODIFICATIONS.—The President may proclaim—

''(1) such modifications or continuation of any duty;

''(2) such continuation of duty-free or excise treatment; or

''(3) such additional duties,

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Jordan provided for by the Agreement.

''SEC. 102. RULES OF ORIGIN.

''(a) IN GENERAL.—

''(1) ELIGIBLE ARTICLES.—

''(A) IN GENERAL.—The reduction or elimination of any duty imposed on any article by the United States provided for in the Agreement shall apply only if—

''(i) that article is imported directly from Jordan into the customs territory of the United States; and

''(ii) that article—

''(I) is wholly the growth, product, or manufacture of Jordan; or

''(II) is a new or different article of commerce that has been grown, produced, or manufactured in Jordan and meets the requirements of subparagraph (B).

''(B) REQUIREMENTS.—

''(i) GENERAL RULE.—The requirements of this subparagraph are that with respect to an article described in subparagraph (A)(ii)(II), the sum of—

''(I) the cost or value of the materials produced in Jordan, plus

''(II) the direct costs of processing operations performed in Jordan,

is not less than 35 percent of the appraised value of such article at the time it is entered.

''(ii) MATERIALS PRODUCED IN UNITED STATES.—If the cost or value of materials produced in the customs territory of the United States is included with respect to an article to which this paragraph applies, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied toward determining the percentage referred to in clause (i).

''(2) EXCLUSIONS.—No article may be considered to meet the requirements of paragraph (1)(A) by virtue of having merely undergone—

''(A) simple combining or packaging operations; or

''(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

''(b) DIRECT COSTS OF PROCESSING OPERATIONS.—

''(1) IN GENERAL.—As used in this section, the term 'direct costs of processing operations' includes, but is not limited to—

''(A) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel; and

''(B) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

''(2) EXCLUDED COSTS.—The term 'direct costs of processing operations' does not include costs which are not directly attributable to the merchandise concerned, or are not costs of manufacturing the product, such as—

''(A) profit; and

''(B) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

''(c) TEXTILE AND APPAREL ARTICLES.—

''(1) IN GENERAL.—A textile or apparel article imported directly from Jordan into the customs territory of the United States shall be considered to meet the requirements of paragraph (1)(A) of subsection (a) only if—

''(A) the article is wholly obtained or produced in Jordan;

''(B) the article is a yarn, thread, twine, cordage, rope, cable, or braiding, and—

''(i) the constituent staple fibers are spun in Jordan, or

''(ii) the continuous filament is extruded in Jordan;

''(C) the article is a fabric, including a fabric classified under chapter 59 of the HTS, and the con-

stituent fibers, filaments, or yarns are woven, knitted, needled, tufted, felted, entangled, or transformed by any other fabric-making process in Jordan; or

''(D) the article is any other textile or apparel article that is wholly assembled in Jordan from its component pieces.

''(2) DEFINITION.—For purposes of paragraph (1), an article is 'wholly obtained or produced in Jordan' if it is wholly the growth, product, or manufacture of Jordan.

''(3) SPECIAL RULES.—

''(A) CERTAIN MADE-UP ARTICLES, TEXTILE ARTICLES IN THE PIECE, AND CERTAIN OTHER TEXTILES AND TEXTILE ARTICLES.—Notwithstanding paragraph (1)(D) and except as provided in subparagraphs (C) and (D) of this paragraph, subparagraph (A), (B), or (C) of paragraph (1), as appropriate, shall determine whether a good that is classified under one of the following headings or subheadings of the HTS shall be considered to meet the requirements of paragraph (1)(A) of subsection (a): 5609, 5807, 5811, 6209.20.50.40, 6213, 6214, 6301, 6302, 6304, 6305, 6306, 6307.10, 6307.90, 6308, and 9404.90.

''(B) CERTAIN KNIT-TO-SHAPE TEXTILES AND TEXTILE ARTICLES.—Notwithstanding paragraph (1)(D) and except as provided in subparagraphs (C) and (D) of this paragraph, a textile or apparel article which is knit-to-shape in Jordan shall be considered to meet the requirements of paragraph (1)(A) of subsection (a).

''(C) CERTAIN DYED AND PRINTED TEXTILES AND TEXTILE ARTICLES.—Notwithstanding paragraph (1)(D), a good classified under heading 6117.10, 6213.00, 6214.00. 6302.22, 6302.29, 6302.52, 6302.53, 6302.59, 6302.92, 6302.93, 6302.99, 6303.92, 6303.99, 6304.19, 6304.93, 6304.99, 9404.90.85, or 9404.90.95 of the HTS, except for a good classified under any such heading as of cotton or of wool or consisting of fiber blends containing 16 percent or more by weight of cotton, shall be considered to meet the requirements of paragraph (1)(A) of subsection (a) if the fabric in the good is both dyed and printed in Jordan, and such dyeing and printing is accompanied by 2 or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.

''(D) FABRICS OF SILK, COTTON, MANMADE FIBER OR VEGETABLE FIBER.—Notwithstanding paragraph (1)(C), a fabric classified under the HTS as of silk, cotton, man-made fiber, or vegetable fiber shall be considered to meet the requirements of paragraph (1)(A) of subsection (a) if the fabric is both dyed and printed in Jordan, and such dyeing and printing is accompanied by 2 or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.

''(4) MULTICOUNTRY RULE.—If the origin of a textile or apparel article cannot be determined under paragraph (1) or (3), then that article shall be considered to meet the requirements of paragraph (1)(A) of subsection (a) if—

''(A) the most important assembly or manufacturing process occurs in Jordan; or

''(B) if the applicability of paragraph (1)(A) of subsection (a) cannot be determined under subparagraph (A), the last important assembly or manufacturing occurs in Jordan.

''(d) EXCLUSION.—A good shall not be considered to meet the requirements of paragraph (1)(A) of subsection (a) if the good—

''(1) is imported into Jordan, and, at the time of importation, would be classified under heading 0805 of the HTS; and

''(2) is processed in Jordan into a good classified under any of subheadings 2009.11 through 2009.30 of the HTS.

''(e) REGULATIONS.—The Secretary of the Treasury, after consultation with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out this section.

''TITLE II—RELIEF FROM IMPORTS

''SUBTITLE A—GENERAL PROVISIONS

''SEC. 201. DEFINITIONS.

''As used in this title:

''(1) COMMISSION.—The term 'Commission' means the United States International Trade Commission.

''(2) JORDANIAN ARTICLE.—The term 'Jordanian article' means an article that qualifies for reduction or elimination of a duty under section 102.

''SUBTITLE B—RELIEF FROM IMPORTS BENEFITING FROM THE AGREEMENT

''SEC. 211. COMMENCING OF ACTION FOR RELIEF.

''(a) FILING OF PETITION.—

''(1) IN GENERAL.—A petition requesting action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers that is representative of an industry. The Commission shall transmit a copy of any petition filed under this subsection to the United States Trade Representative.

''(2) PROVISIONAL RELIEF.—An entity filing a petition under this subsection may request that provisional relief be provided as if the petition had been filed under section 202(a) of the Trade Act of 1974 [19 U.S.C. 2252(a)].

''(3) CRITICAL CIRCUMSTANCES.—Any allegation that critical circumstances exist shall be included in the petition.

''(b) INVESTIGATION AND DETERMINATION.—

''(1) IN GENERAL.—Upon the filing of a petition under subsection (a), the Commission, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a Jordanian article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the Jordanian article alone constitute a substantial cause of serious injury or threat thereof to the domestic industry producing an article that is like, or directly competitive with, the imported article.

''(2) CAUSATION.—For purposes of this subtitle, a Jordanian article is being imported into the United States in increased quantities as a result of the reduction or elimination of a duty provided for under the Agreement if the reduction or elimination is a cause that contributes significantly to the increase in imports. Such cause need not be equal to or greater than any other cause.

''(c) APPLICABLE PROVISIONS.—The following provisions of section 202 of the Trade Act of 1974 (19 U.S.C. 2252) apply with respect to any investigation initiated under subsection (b):

''(1) Paragraphs (1)(B) and (3) of subsection (b).

''(2) Subsection (c).

''(3) Subsection (d).

''(d) ARTICLES EXEMPT FROM INVESTIGATION.—No investigation may be initiated under this section with respect to any Jordanian article if import relief has been provided under this subtitle with respect to that article.

''SEC. 212. COMMISSION ACTION ON PETITION.

''(a) DETERMINATION.—By no later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 211(b) with respect to a petition, the Commission shall make the determination required under that section.

''(b) ADDITIONAL FINDING AND RECOMMENDATION IF DETERMINATION AFFIRMATIVE.—If the determination made by the Commission under subsection (a) with respect to

imports of an article is affirmative, the Commission shall find, and recommend to the President in the report required under subsection (c), the amount of import relief that is necessary to remedy or prevent the injury found by the Commission in the determination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The import relief recommended by the Commission under this subsection shall be limited to that described in section 213(c).

''(c) REPORT TO PRESIDENT.—No later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that shall include—

''(1) a statement of the basis for the determination;

''(2) dissenting and separate views; and

''(3) any finding made under subsection (b) regarding import relief.

''(d) PUBLIC NOTICE.—Upon submitting a report to the President under subsection (c), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

''(e) APPLICABLE PROVISIONS.—For purposes of this subtitle, the provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

''SEC. 213. PROVISION OF RELIEF.

''(a) IN GENERAL.—No later than the date that is 30 days after the date on which the President receives the report of the Commission containing an affirmative determination of the Commission under section 212(a), the President shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to prevent or remedy the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition, unless the President determines that the provision of such relief is not in the national economic interest of the United States or, in extraordinary circumstances, that the provision of such relief would cause serious harm to the national security of the United States.

''(b) NATIONAL ECONOMIC INTEREST.—The President may determine under subsection (a) that providing import relief is not in the national economic interest of the United States only if the President finds that taking such action would have an adverse impact on the United States economy clearly greater than the benefits of taking such action.

''(c) NATURE OF RELIEF.—The import relief (including provisional relief) that the President is authorized to provide under this subtitle with respect to imports of an article is—

''(1) the suspension of any further reduction provided for under the United States Schedule to Annex 2.1 of the Agreement in the duty imposed on that article;

''(2) an increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

''(A) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

''(B) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force; or

''(3) in the case of a duty applied on a seasonal basis to that article, an increase in the rate of duty imposed on the article to a level that does not exceed the column 1 general rate of duty imposed under the HTS on the article for the corresponding season occurring immediately before the date on which the Agreement enters into force.

''(d) PERIOD OF RELIEF.—The import relief that the President is authorized to provide under this section may not exceed 4 years.

''(e) RATE AFTER TERMINATION OF IMPORT RELIEF.—When import relief under this subtitle is terminated with respect to an article—

''(1) the rate of duty on that article after such termination and on or before December 31 of the year in which termination occurs shall be the rate that, according to the United States Schedule to Annex 2.1 of the Agreement for the staged elimination of the tariff, would have been in effect 1 year after the initiation of the import relief action under section 211; and

''(2) the tariff treatment for that article after December 31 of the year in which termination occurs shall be, at the discretion of the President, either—

''(A) the rate of duty conforming to the applicable rate set out in the United States Schedule to Annex 2.1; or

''(B) the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the United States Schedule to Annex 2.1 for the elimination of the tariff.

''SEC. 214. TERMINATION OF RELIEF AUTHORITY.

''(a) GENERAL RULE.—Except as provided in subsection (b), no import relief may be provided under this subtitle after the date that is 15 years after the date on which the Agreement enters into force.

''(b) EXCEPTION.—Import relief may be provided under this subtitle in the case of a Jordanian article after the date on which such relief would, but for this subsection, terminate under subsection (a), but only if the Government of Jordan consents to such provision.

''SEC. 215. COMPENSATION AUTHORITY.

''For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under section 213 shall be treated as action taken under chapter 1 of title II of such Act [19 U.S.C. 2251 et seq.].

''SEC. 216. SUBMISSION OF PETITIONS.

''A petition for import relief may be submitted to the Commission under—

''(1) this subtitle;

''(2) chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.]; or

''(3) under both this subtitle and such chapter 1 at the same time, in which case the Commission shall consider such petitions jointly.

''SUBTITLE C—CASES UNDER TITLE II OF THE TRADE ACT OF 1974

''SEC. 221. FINDINGS AND ACTION ON JORDANIAN IMPORTS.

''(a) EFFECT OF IMPORTS.—If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.], the Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 330(d) of the Tariff Act of 1930 [19 U.S.C. 1330(d)]), the Commission shall also find (and report to the President at the time such injury determination is submitted to the President) whether imports of the article from Jordan are a substantial cause of serious injury or threat thereof.

''(b) PRESIDENTIAL ACTION REGARDING JORDANIAN IMPORTS.—In determining the nature and extent of action to be taken under chapter 1 of title II of the Trade Act of 1974, the President shall determine whether imports from Jordan are a substantial cause of the serious injury found by the Commission and, if such determination is in the negative, may exclude from such action imports from Jordan.

''SEC. 222. TECHNICAL AMENDMENT.

[Amended section 2252 of this title.]

''TITLE III—TEMPORARY ENTRY

''SEC. 301. NONIMMIGRANT TRADERS AND INVESTORS.

''Upon the basis of reciprocity secured by the Agreement, an alien who is a national of Jordan (and any spouse or child (as defined in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)) of the alien, if accompanying or following to join the alien) shall be considered as entitled to enter the United States under and in pursuance of the provisions of the Agreement as a nonimmigrant described in section 101(a)(15)(E) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)), if the entry is solely for a purpose described in clause (i) or (ii) of such section and the alien is otherwise admissible to the United States as such a nonimmigrant.

''TITLE IV—GENERAL PROVISIONS

''SEC. 401. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW.

''(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.—

''(1) UNITED STATES LAW TO PREVAIL IN CONFLICT.—No provision of the Agreement, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect.

''(2) CONSTRUCTION.—Nothing in this Act shall be construed—

''(A) to amend or modify any law of the United States; or

''(B) to limit any authority conferred under any law of the United States,

unless specifically provided for in this Act.

''(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

''(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

''(2) DEFINITION OF STATE LAW.—For purposes of this subsection, the term 'State law' includes—

''(A) any law of a political subdivision of a State; and

''(B) any State law regulating or taxing the business of insurance.

''(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

''(1) shall have any cause of action or defense under the Agreement; or

''(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State on the ground that such action or inaction is inconsistent with the Agreement.

''SEC. 402. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated for each fiscal year after fiscal year 2001 to the Department of Commerce not more than $100,000 for the payment of the United States share of the expenses incurred in dispute settlement proceedings under article 17 of the Agreement.

''SEC. 403. IMPLEMENTING REGULATIONS.

''After the date of enactment of this Act [Sept. 28, 2001]—

''(1) the President may proclaim such actions; and

''(2) other appropriate officers of the United States may issue such regulations,

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date the Agreement enters into force.

''SEC. 404. EFFECTIVE DATES; EFFECT OF TERMINATION.

''(a) EFFECTIVE DATES.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date the Agreement enters into force [Dec. 17, 2001].

''(b) EXCEPTIONS.—Sections 1 through 3 and this title take effect on the date of the enactment of this Act [Sept. 28, 2001].

''(c) TERMINATION OF THE AGREEMENT.—On the date on which the Agreement ceases to be in force, the provisions of this Act (other than this subsection) and the amendments made by this Act, shall cease to be effective.''

[The Harmonized Tariff Schedule of the United States is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.]

UNITED STATES-CANADA FREE-TRADE AGREEMENT IMPLEMENTATION

Pub. L. 100–449, Sept. 28, 1988, 102 Stat. 1851, as amended by Pub. L. 101–207, § 1(b), Dec. 7, 1989, 103 Stat. 1833; Pub. L. 101–382, title I, §§ 103(b), 134(b), Aug. 20, 1990, 104 Stat. 635, 651; Pub. L. 103–182, title I, § 107, title III, § 308(a), title IV, § 413, Dec. 8, 1993, 107 Stat. 2065, 2104, 2147; Pub. L. 104–66, title I, § 1021(d), Dec. 21, 1995, 109 Stat. 712; Pub. L. 105–206, title V, § 5003(b)(3), July 22, 1998, 112 Stat. 789, provided that:

''SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

''(a) SHORT TITLE.—This Act [enacting section 1584 of Title 28, Judiciary and Judicial Procedure, amending sections 58c, 81c, 1305, 1306, 1311, 1312, 1313, 1502, 1508, 1514, 1516a, 1562, 1677, 1677f, and 2518 of this title, sections 150bb, 150cc, 154, 156, 624, 1582, and 2803 of Title 7, Agriculture, section 1184 of Title 8, Aliens and Nationality, section 24 of Title 12, Banks and Banking, section 152 of Title 21, Food and Drugs, sections 1581, 2201, and 2643 of Title 28, section 2201 of Title 42, The Public Health and Welfare, section 2406 of the Appendix to Title 50, War and National Defense, enacting provisions set out as notes below, and amending provisions set out as a note under section 2253 of this title] may be cited as the 'United States-Canada Free-Trade Agreement Implementation Act of 1988'.

''(b) TABLE OF CONTENTS.—[Omitted.]

''SEC. 2. PURPOSES.

''The purposes of this Act are—

''(1) to approve and implement the Free-Trade Agreement between the United States and Canada negotiated under the authority of section 102 of the Trade Act of 1974 [19 U.S.C. 2112];

''(2) to strengthen and develop economic relations between the United States and Canada for their mutual benefit;

''(3) to establish a free-trade area between the two nations through the reduction and elimination of barriers to trade in goods and services and to investment; and

''(4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

''TITLE I—APPROVAL OF UNITED STATES-CANADA FREE-TRADE AGREEMENT AND RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW

''SEC. 101. APPROVAL OF UNITED STATES-CANADA FREE-TRADE AGREEMENT.

''(a) APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.—Pursuant to sections 102 and 151 of the Trade Act of 1974 (19 U.S.C. 2112 and 2191), the Congress approves—

''(1) the United States-Canada Free-Trade Agreement (hereinafter in this Act referred to as the 'Agreement') entered into on January 2, 1988, and submitted to the Congress on July 25, 1988;

''(2) the letters exchanged between the Governments of the United States and Canada—

''(A) dated January 2, 1988, relating to negotiations regarding articles 301 (Rules of Origin) and 401 (Tariff Elimination) of the Agreement, and

''(B) dated January 2, 1988, relating to negotiations regarding article 2008 (Plywood Standards) of the Agreement; and

''(3) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on July 25, 1988.

''(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—At such time as the President determines that Canada has taken measures necessary to comply with the obligations of the Agreement, the President is authorized to exchange notes with the Government of Canada providing for the entry into force, on or after January 1, 1989, of the Agreement with respect to the United States.

''(c) REPORT ON CANADIAN PRACTICES.—Within 60 days after the date of the enactment of this Act [Sept. 28, 1988] (but not later than December 15, 1988), the United States Trade Representative shall submit to the Congress a report identifying, to the maximum extent practicable, major current Canadian practices (and the legal authority for such practices) that, in the opinion of the United States Trade Representative—

''(1) are not in conformity with the Agreement; and

''(2) require a change of Canadian law, regulation, policy, or practice to enable Canada to conform with its international obligations under the Agreement.

''SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES LAW.

''(a) UNITED STATES LAWS TO PREVAIL IN CONFLICT.—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is in conflict with any law of the United States shall have effect.

''(b) RELATIONSHIP OF AGREEMENT TO STATE AND LOCAL LAW.—

''(1) The provisions of the Agreement prevail over—

''(A) any conflicting State law; and

''(B) any conflicting application of any State law to any person or circumstance;

to the extent of the conflict.

''(2) Upon the enactment of this Act, the President shall, in accordance with section 306(c)(2)(A) of the Trade and Tariff Act of 1984 (19 U.S.C. 2114c), initiate consultations with the State governments on the implementation of the obligations of the United States under the Agreement. Such consultations shall be held—

''(A) through the intergovernmental policy advisory committees on trade established under such section for the purpose of achieving conformity of State laws and practices with the Agreement; and

''(B) with the individual States as necessary to deal with particular questions that may arise.

''(3) The United States may bring an action challenging any provision of State law, or the application thereof to any person or circumstance, on the ground that the provision or application is inconsistent with the Agreement.

''(4) For purposes of this subsection, the term 'State law' includes—

''(A) any law of a political subdivision of a State; and

''(B) any State law regulating or taxing the business of insurance.

''(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States shall—

''(1) have any cause of action or defense under the Agreement or by virtue of congressional approval thereof, or

''(2) challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State on the ground that such action or inaction is inconsistent with the Agreement.

''(d) INITIAL IMPLEMENTING REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions proposed in the statement of administrative action submitted under section 101(a)(3) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date of entry into force of the Agreement [Jan. 1, 1989]. In the case of any implementing action that takes effect after the date of entry into force of the Agreement, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

''(e) CHANGES IN STATUTES TO IMPLEMENT A REQUIREMENT, AMENDMENT, OR RECOMMENDATION.—The provisions of section 3(c) of the Trade Agreements Act of 1979 (19 U.S.C. 2504(c)) shall apply as if the Agreement were an agreement approved under section 2(a) of that Act [19 U.S.C. 2503(a)] whenever the President determines that it is necessary or appropriate to amend, repeal, or enact a statute of the United States in order to implement any requirement of, amendment to, or recommendation, finding or opinion under, the Agreement; but such provisions shall not apply to any bill to implement any such requirement, amendment, recommendation, finding, or opinion that is submitted to the Congress after the close of the 30th month after the month in which the Agreement enters into force [January 1989].

''SEC. 103. CONSULTATION AND LAY-OVER REQUIREMENTS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

''(a) CONSULTATION AND LAY-OVER REQUIREMENTS.—If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and lay-over requirements of this section, such action may be proclaimed only if—

''(1) the President has obtained advice regarding the proposed action from—

''(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974 [19 U.S.C. 2155], and

''(B) the United States International Trade Commission;

''(2) the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth—

''(A) the action proposed to be proclaimed and the reasons therefor, and

''(B) the advice obtained under paragraph (1);

''(3) a period of at least 60 calendar days that begins on the first day on which the President has met the requirements of paragraphs (1) and (2) with respect to such action has expired; and

''(4) the President has consulted with such Committees regarding the proposed action during the period referred to in paragraph (3).

''(b) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.—No action proclaimed by the President under the authority of this Act, if such action is not subject to the consultation and lay-over requirements under subsection (a), may take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

''SEC. 104. HARMONIZED SYSTEM.

''(a) DEFINITION.—As used in this Act, the term 'Harmonized System' means the nomenclature system established under the International Convention on the Harmonized Commodity Description and Coding System (done at Brussels on June 14, 1983, and the protocol thereto, done at Brussels on June 24, 1986) as implemented under United States law.

''(b) INTERIM APPLICATION OF TSUS.—The following apply if the International Convention, and the protocol thereto, referred to in subsection (a) are not implemented under United States law before the Agreement enters into force:

''(1) The President, subject to subsection (c), shall proclaim such modifications to the Tariff Schedules of the United States (19 U.S.C. 1202) as may be necessary to give effect, until such time as such Convention and protocol are so implemented, to the rules of origin, schedule of rate reductions, and other provisions that would, but for the absence of such implementation, be proclaimed under the authority of this

Act to, or in terms of, the Harmonized System to implement the obligations of the United States under the Agreement.

''(2) Until such time as such Convention and protocol are so implemented, any reference in this Act to the nomenclature of such Convention and protocol shall be treated as a reference to the corresponding nomenclature of the Tariff Schedules of the United States as modified under paragraph (1).

''(c) RESTRICTIONS.—

''(1) No modification described in subsection (b)(1) that is to take effect concurrently with the entry into force of the Agreement may be proclaimed unless the text of the modification is published in the Federal Register at least 30 days before the date of entry into force [Jan. 1, 1989].

''(2) All modifications proclaimed under the authority of subsection (b)(1) after the Agreement enters into force with respect to the United States are subject to the consultation and lay-over requirements of section 103(a).

''SEC. 105. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE.

''Subject to section 103 or 104(c), as appropriate, and any other applicable restriction or limitation in this Act on the proclaiming of actions or the issuing of regulations to carry out this Act or any amendment made by this Act, after the date of the enactment of this Act [Sept. 28, 1988]—

''(1) the President may proclaim such actions; and

''(2) other appropriate officers of the United States Government may issue such regulations;

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force [Jan. 1, 1989] is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date of entry into force.

''TITLE II—TARIFF MODIFICATIONS, RULES OF ORIGIN, USER FEES, DRAWBACK, ENFORCEMENT, AND OTHER CUSTOMS PROVISIONS

''SEC. 201. TARIFF MODIFICATIONS.

''(a) TARIFF MODIFICATIONS SPECIFIED IN THE AGREEMENT.—The President may proclaim—

''(1) such modifications or continuance of any existing duty;

''(2) such continuance of existing duty-free or excise treatment; or

''(3) such additional duties;

as the President determines to be necessary or appropriate to carry out article 401 of the Agreement and the schedule of duty reductions with respect to Canada set forth in Annexes 401.2 and 401.7 to the Agreement, as approved under section 101(a)(1). For purposes of proclaiming necessary modifications under such Annex 401.2, any article covered under subheading 9813.00.05 (contained in the United States Schedule in such Annex) shall, unless such article is a drawback eligible good under section 204(a), be treated as being subject to any otherwise applicable customs duty if the article, or merchandise incorporating such article, is exported to Canada.

''(b) OTHER TARIFF MODIFICATIONS.—Subject to the consultation and lay-over requirements of section 103(a), the President may proclaim—

''(1) such modifications as the United States and Canada may agree to regarding the staging of any duty treatment set forth in Annexes 401.2 and 401.7 of the Agreement;

''(2) such modifications or continuance of any existing duty;

''(3) such continuance of existing duty-free or excise treatment; or

''(4) such additional duties;

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada provided for by the Agreement.

''(c) MODIFICATIONS AFFECTING PLYWOOD.—

''(1) The Congress encourages the President to facilitate the preparation, and the implementation with Canada, of common performance standards for the use of softwood plywood and other structural panels in construction applications in the United States and Canada.

''(2) The President shall report to the Congress on the incorporation of common plywood performance standards into building codes in the United States and Canada and may implement the provisions of article 2008 of the Agreement when he determines that the necessary conditions have been met.

''(3) Any tariff reduction undertaken pursuant to paragraph (2) shall be in equal annual increments ending January 1, 1998, unless those reductions commence after January 1, 1991.

''SEC. 202. RULES OF ORIGIN.

''(a) IN GENERAL.—

''(1) For purposes of implementing the tariff treatment contemplated under the Agreement, goods originate in the territory of a Party if—

''(A) they are wholly obtained or produced in the territory of either Party or both Parties; or

''(B) they—

''(i) have been transformed in the territory of either Party or both Parties so as to be subject to a change in tariff classification as described in the Annex rules or to such other requirements as the Annex rules may provide when no change in tariff classifications occurs, and

''(ii) meet the other conditions set out in the Annex.

''(2) A good shall not be considered to originate in the territory of a party [Party] under paragraph (1)(B) merely by virtue of having undergone—

''(A) simple packaging or, except as expressly provided by the Annex rules, combining operations;

''(B) mere dilution with water or another substance that does not materially alter the characteristics of the good; or

''(C) any process or work in respect of which it is established, or in respect of which the facts as ascertained clearly justify the presumption, that the sole object was to circumvent the provisions of chapter 3 of the Agreement.

''(3) Accessories, spare parts, or tools delivered with any piece of equipment, machinery, apparatus, or vehicle that form part of its standard equipment shall be treated as having the same origin as that equipment, machinery, apparatus, or vehicle if the quantities and values of such accessories, spare parts, or tools are customary for the equipment, machinery, apparatus, or vehicle.

''(b) TRANSSHIPMENT.—Goods exported from the territory of one Party originate in the territory of that Party only if—

''(1) the goods meet the applicable requirements of subsection (a) and are shipped to the territory of the other Party without having entered the commerce of any third country;

''(2) the goods, if shipped through the territory of a third country, do not undergo any operation other than unloading, reloading, or any operation necessary to transport them to the territory of the other Party or to preserve them in good condition; and

''(3) the documents related to the exportation and shipment of the goods from the territory of a Party show the territory of the other Party as their final destination.

''(c) INTERPRETATION.—In interpreting this section, the following apply:

''(1) Whenever the processing or assembly of goods in the territory of either Party or both Parties results in one of the changes in tariff classification described in the Annex rules, such goods shall be considered to have been transformed in the territory of that Party and shall be treated as goods originating in the territory of that Party if—

''(A) such processing or assembly occurs entirely within the territory of either Party or both Parties; and

''(B) such goods have not subsequently undergone any processing or assembly outside the territories of the Parties that improves the goods in condition or advances them in value.

''(2) Whenever the assembly of goods in the territory of a Party fails to result in a change of tariff classification because either—

''(A) the goods were imported into the territory of the Party in an unassembled or a disassembled form and were classified as unassembled or disassembled goods pursuant to General Rule of Interpretation 2(a) of the Harmonized System; or

''(B) the tariff subheading for the goods provides for both the goods themselves and their parts;

such goods shall not be treated as goods originating in the territory of a Party.

''(3) Notwithstanding paragraph (2), goods described in that paragraph shall be considered to have been transformed in the territory of a Party and be treated as goods originating in the territory of the Party if—

''(A) the value of materials originating in the territory of either Party or both Parties used or consumed in the production of the goods plus the direct cost of assembling the goods in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party; and

''(B) the goods have not subsequent to assembly undergone processing or further assembly in a third country and they meet the requirements of subsection (b).

''(4) The provisions of paragraph (3) shall not apply to goods of chapters 61–63 of the Harmonized System.

''(5) In making the determination required by paragraph (3)(A) and in making the same or a similar determination when required by the Annex rules, where materials originating in the territory of either Party or both Parties and materials obtained or produced in a third country are used or consumed together in the production of goods in the territory of a Party, the value of materials originating in the territory of either Party or both Parties may be treated as such only to the extent that it is directly attributable to the goods under consideration.

''(6) In applying the Annex rules, a specific rule shall take precedence over a more general rule.

''(d) ANNEX RULES.—

''(1) The President is authorized to proclaim, as a part of the Harmonized System, the rules set forth under the heading 'Rules' in Annex 301.2 of the Agreement. For purposes of carrying out this paragraph—

''(A) the phrase 'headings 2207–2209' in paragraph 7 of section IV of such Annex 301.2 shall be treated as a reference to headings 2203–2209; and

''(B) the phrase 'any other heading' in paragraph 11 of section XV in such Annex 301.2 shall be treated as a reference to any other heading of chapter 74 of the Harmonized System.

''(2) Subject to the consultation and lay-over requirements of section 103, the President is authorized to proclaim such modifications to the rules as may from time-to-time be agreed to by the United States and Canada.

''(e) AUTOMOTIVE PRODUCTS.—

''(1) The President is authorized to proclaim such modifications to the definition of Canadian articles (relating to the administration of the Automotive Products Trade Act of 1965 [19 U.S.C. 2001 et seq.]) in the general notes of the Harmonized System as may be necessary to conform that definition with chapter 3 of the Agreement.

''(2) For purposes of administering the value requirement (as defined in section 304(c)(3)) with respect to vehicles, the Secretary of the Treasury shall prescribe regulations governing the averaging of the value content of vehicles of the same class, or of sister vehicles, assembled in the same plant as an alternative to the calculation of the value content of each vehicle.

''(f) DEFINITIONS.—For purposes of this section:

''(1) The term 'Annex' means—

''(A) the interpretative guidelines set forth in subsection (c); and

''(B) the Annex rules.

''(2) The term 'Annex rules' means the rules proclaimed under subsection (d).

''(3) The term 'direct cost of processing or direct cost of assembling' means the costs directly incurred in, or that can reasonably be allocated to, the production of goods, including—

''(A) the cost of all labor, including benefits and on-the-job training, labor provided in connection with supervision, quality control, shipping, receiving, storage, packaging, management at the location of the process or assembly, and other like labor, whether provided by employees or independent contractors;

''(B) the cost of inspecting and testing the goods;

''(C) the cost of energy, fuel, dies, molds, tooling, and the depreciation and maintenance of machinery and equipment, without regard to whether they originate within the territory of a Party;

''(D) development, design, and engineering costs;

''(E) rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes and the cost of utilities for real property used in the production of goods; and

''(F) royalty, licensing, or other like payments for the right to the goods;

but not including—

''(i) costs relating to the general expense of doing business, such as the cost of providing executive, financial, sales, advertising, marketing, accounting and legal services, and insurance;

''(ii) brokerage charges relating to the importation and exportation of goods;

''(iii) the costs for telephone, mail, and other means of communication;

''(iv) packing costs for exporting the goods;

''(v) royalty payments related to a licensing agreement to distribute or sell the goods;

''(vi) rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes, and the cost of utilities for real property used by personnel charged with administrative functions; or

''(vii) profit on the goods.

''(4) The term 'goods wholly obtained or produced in the territory of either Party or both Parties' means—

''(A) mineral goods extracted in the territory of either Party or both Parties;

''(B) goods harvested in the territory of either Party or both Parties;

''(C) live animals born and raised in the territory of either Party or both Parties;

''(D) goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

''(E) goods produced on board factory ships from the goods referred to in subparagraph (D) provided such factory ships are registered or recorded with that Party and fly its flag;

''(F) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that Party has rights to exploit such seabed;

''(G) goods taken from space, provided they are obtained by a Party or a person of a Party and not processed in a third country;

''(H) waste and scrap derived from manufacturing operations and used goods, provided they were collected in the territory of either Party or both Parties and are fit only for the recovery of raw materials; and

''(I) goods produced in the territory of either Party or both Parties exclusively from goods re-

ferred to in subparagraphs (A) to (H) inclusive or from their derivatives, at any stage of production.

''(5) The term 'materials' means goods, other than those included as part of the direct cost of processing or assembling, used or consumed in the production of other goods.

''(6) The term 'Party' means Canada or the United States.

''(7) The term 'territory' means—

''(A) with respect to Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic laws, Canada may exercise rights with respect to the seabed and subsoil and their natural resources; and

''(B) with respect to the United States—

''(i) the customs territory of the United States, which includes the fifty States, the District of Columbia and the Commonwealth of Puerto Rico,

''(ii) the foreign trade zones located in the United States, and the Commonwealth of Puerto Rico, and

''(iii) any area beyond the territorial seas of the United States within which, in accordance with international law and its domestic laws, the United States may exercise rights with respect to the seabed and subsoil and their natural resources.

''(8) The term 'third country' means any country other than Canada or the United States or any territory not a part of the territory of either.

''(9) The term 'value of materials originating in the territory of either Party or both Parties' means the aggregate of—

''(A) the price paid by the producer of an exported good for materials originating in the territory of either Party or both Parties or for materials imported from a third country used or consumed in the production of such originating materials; and

''(B) when not included in that price, the following costs related thereto—

''(i) freight, insurance, packing, and all other costs incurred in transporting any of the materials referred to in subparagraph (A) to the location of the producer;

''(ii) duties, taxes, and brokerage fees on such materials paid in the territory of either Party or both Parties;

''(iii) the cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or byproduct; and

''(iv) the value of goods and services relating to such materials determined in accordance with subparagraph 1(b) of article 8 of the Agreement on Implementation of article VII of the General Agreement on Tariffs and Trade.

''(10) The term 'value of the goods when exported to the territory of the other Party' means the aggregate of—

''(A) the price paid by the producer for all materials, whether or not the materials originate in either Party or both Parties, and, when not included in the price paid for the materials, the costs related to—

''(i) freight, insurance, packing, and all other costs incurred in transporting all materials to the location of the producer;

''(ii) duties, taxes, and brokerage fees on all materials paid in the territory of either Party or both Parties;

''(iii) the cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or byproduct; and

''(iv) the value of goods and services relating to all materials determined in accordance with subparagraph 1(b) of article 8 of the Agreement on Implementation of article VII of the General Agreement on Tariffs and Trade; and

''(B) the direct cost of processing or the direct cost of assembling the goods.

''(g) SPECIAL PROVISION REGARDING APPLICATION OF RULES OF ORIGIN TO CERTAIN APPAREL.—The Secretary of Commerce is authorized to issue regulations governing the exportation to Canada of apparel products that are cut, or knit to shape, and sewn, or otherwise assembled, in either Party from fabric produced or obtained in a third country for the purpose of establishing which exports of such products shall be permitted to claim preferential tariff treatment under the rules of origin of the Agreement, to the extent that the Agreement provides for quantitative limits on the availability of preferential tariff treatment for such products.

''SEC. 203. CUSTOMS USER FEES.

[Amended section 58c of this title.]

''SEC. 204. DRAWBACK.

''(a) DEFINITION.—For purposes of this section, the term 'drawback eligible goods' means—

''(1) goods provided for under paragraph 8 of article 404 of the Agreement;

''(2) goods provided for under paragraphs 4 and 5 of such article; and

''(3) goods other than those referred to in paragraphs (1) and (2) that the United States and Canada agree are not subject to paragraphs 1, 2, and 3 of such article.

No drawback may be paid with respect to countervailing duties or antidumping duties imposed on drawback eligible goods.

''(b) IMPLEMENTATION OF ARTICLE 404.—The President is authorized—

''(1) to proclaim the identity, in accordance with the nomenclature of the Harmonized System, of goods referred to in subsection (a)(1); and

''(2) subject to the consultation and lay-over requirements of section 103(a), to proclaim—

''(A) the identity, in accordance with the nomenclature of the Harmonized System, of goods referred to in subsection (a)(3); and

''(B) a delay in the taking effect of article 404 of the Agreement to a date later than January 1, 1994, with respect to any merchandise if the United States and Canada agree to the delay under paragraph 7 of such article.

''(c) CONSEQUENTIAL AMENDMENTS.—

''(1) BONDED MANUFACTURING WAREHOUSES.—[Amended section 1311 of this title.]

''(2) BONDED SMELTING AND REFINING WAREHOUSES.—[Amended section 1312 of this title.]

''(3) DRAWBACK.—[Amended section 1313 of this title.]

''(4) MANIPULATION IN WAREHOUSE.—[Amended section 1562 of this title.]

''(5) FOREIGN TRADE ZONES.—[Amended section 81c of this title.]

''SEC. 205. ENFORCEMENT.

''(a) CERTIFICATIONS OF ORIGIN.—

''(1) Any person that certifies in writing that goods exported to Canada meet the rules of origin under section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988 [section 202 of this note] shall provide, upon request by any customs official, a copy of that certification.

''(2) Any person that fails to provide a copy of a certification requested under paragraph (1) shall be liable to the United States for a civil penalty not to exceed $10,000.

''(3) Any person that certifies falsely that goods exported to Canada meet the rules of origin under such section 202 shall be liable to the United States for the same civil penalties provided under section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) for a violation of section 592(a) of such Act by fraud, gross negligence, or negligence, as the case may be. The procedures and provisions of section 592 of such Act that are applicable to a violation under section 592(a) of such Act shall apply with respect to such false certification.

''(b) HOUSEKEEPING REQUIREMENTS.—[Amended section 1508 of this title.]

''SEC. 206. EXEMPTION FROM LOTTERY TICKET EMBARGO

[Amended section 1305 of this title.]

''SEC. 207. PRODUCTION-BASED DUTY REMISSION PROGRAMS WITH RESPECT TO AUTOMOTIVE PRODUCTS.

''(a) USTR STUDY.—The United States Trade Representative shall—

''(1) undertake a study to determine whether any of the production-based duty remission programs of Canada with respect to automotive products is either—

''(A) inconsistent with the provisions of, or otherwise denies the benefits to the United States under, the General Agreement on Tariffs and Trade, or

''(B) being implemented inconsistently with the obligations under article 1002 of the Agreement not—

''(i) to expand the extent or the application, or

''(ii) to extend the duration,

of such programs; and

''(2) determine whether to initiate an investigation under section 302 of the Trade Act of 1974 [19 U.S.C. 2412] with respect to any of such production-based duty remission programs.

''(b) REPORT AND MONITORING.—

''(1) The United States Trade Representative shall submit a report to Congress no later than June 30, 1989 (or no later than September 30, 1989, if the Trade Representative considers an extension to be necessary) containing—

''(A) the results of the study under subsection (a)(1), as well as a description of the basis used for measuring and verifying compliance with the obligations referred to in subsection (a)(1)(B); and

''(B) any determination made under subsection (a)(2) and the reasons therefor.

''(2) Notwithstanding the submission of the report under paragraph (1), the Trade Representative shall continue to monitor the degree of compliance with the obligations referred to in subsection (a)(1)(B).

''TITLE III—APPLICATION OF AGREEMENT TO SECTORS AND SERVICES

''SEC. 301. AGRICULTURE.

''(a) SPECIAL TARIFF PROVISIONS FOR FRESH FRUITS AND VEGETABLES.—

''(1) The Secretary of Agriculture (hereafter in this section referred to as the 'Secretary') may recommend to the President the imposition of a temporary duty on any Canadian fresh fruit or vegetable entered into the United States if the Secretary determines that both of the following conditions exist at the time that imposition of the duty is recommended:

''(A) For each of 5 consecutive working days the import price of the Canadian fresh fruit or vegetable is below 90 percent of the corresponding 5-year average monthly import price for such fruit or vegetable.

''(B) The planted acreage in the United States for the like fresh fruit or vegetable is no higher than the average planted acreage over the preceding 5 years, excluding the years with the highest and lowest acreage. For the purposes of applying this subparagraph, any acreage increase attributed directly to a reduction in the acreage that was planted to wine grapes as of October 4, 1987, shall be excluded.

Whenever the Secretary makes a determination that the conditions referred to in subparagraphs (A) and (B) regarding any Canadian fresh fruit or vegetable exist, the Secretary shall immediately submit for publication in the Federal Register notice of the determination.

''(2) No later than 6 days after publication in the Federal Register of the notice described in paragraph (1), the Secretary shall decide whether to recommend the imposition of a temporary duty to the President, and if the Secretary decides to make such a recommendation, the recommendation shall be forwarded immediately to the President.

''(3) In determining whether to recommend the imposition of a temporary duty to the President under paragraph (1), the Secretary shall consider whether the conditions in subparagraphs (A) and (B) of such paragraph have led to a distortion in trade between the United States and Canada of the fresh fruit or vegetable and, if so, whether the imposition of the duty is appropriate, including consideration of whether it would significantly correct this distortion.

''(4) Not later than 7 days after receipt of a recommendation of the Secretary under paragraph (1), the President, after taking into account the national economic interests of the United States, shall determine whether to impose a temporary duty on the Canadian fresh fruit or vegetable concerned. If the determination is affirmative, the President shall proclaim the imposition and the rate of the temporary duty, but such duty shall not apply to the entry of articles that were in transit to the United States on the first day on which the temporary duty is in effect.

''(5) A temporary duty imposed under paragraph (4) shall cease to apply with respect to articles that are entered on or after the earlier of—

''(A) the day following the last of 5 consecutive working days with respect to which the Secretary determines that the point of shipment price in Canada for the Canadian fruit or vegetable concerned exceeds 90 percent of the corresponding 5-year average monthly import price; or

''(B) the 180th day after the date on which the temporary duty first took effect.

''(6) No temporary duty may be imposed under this subsection on a Canadian fresh fruit or vegetable during such time as import relief is provided with respect to such fresh fruit or vegetable under chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.].

''(7) For purposes of this subsection:

''(A) The term 'Canadian fresh fruit or vegetable' means any article originating in Canada (as determined in accordance with section 202) and classified within any of the following headings of the Harmonized System:

''(i) 07.01 (relating to potatoes, fresh or chilled);

''(ii) 07.02 (relating to tomatoes, fresh or chilled);

''(iii) 07.03 (relating to onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled);

''(iv) 07.04 (relating to cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled);

''(v) 07.05 (relating to lettuce (lactuca sativa) and chicory (cichorium spp.), fresh or chilled);

''(vi) 07.06 (relating to carrots, salad beets or beetroot, salsify, celeriac, radishes and similar edible roots (excluding turnips), fresh or chilled);

''(vii) 07.07 (relating to cucumbers and gherkins, fresh or chilled);

''(viii) 07.08 (relating to leguminous vegetables, shelled or unshelled, fresh or chilled);

''(ix) 07.09 (relating to other vegetables (excluding truffles), fresh or chilled);

''(x) 08.06.10 (relating to grapes, fresh);

''(xi) 08.08.20 (relating to pears and quinces, fresh);

''(xii) 08.09 (relating to apricots, cherries, peaches (including nectarines), plums and sloes, fresh); and

''(xiii) 08.10 (relating to other fruit (excluding cranberries and blueberries), fresh).

''(B) The term 'corresponding 5-year average monthly import price' for a particular day means the average import price of a Canadian fresh fruit or vegetable, for the calendar month in which that

day occurs, for that month in each of the preceding 5 years, excluding the years with the highest and lowest monthly averages.

''(C) The term 'import price' has the meaning given such term in article 711 of the Agreement.

''(D) The rate of a temporary duty imposed under this subsection with respect to a Canadian fresh fruit or vegetable means a rate that, including the rate of any other duty in effect for such fruit or vegetable, does not exceed the lesser of—

''(i) the duty that was in effect for the fresh fruit or vegetable before January 1, 1989, under column one of the Tariff Schedules of the United States for the applicable season in which the temporary duty is applied; or

''(ii) the duty in effect for the fresh fruit or vegetable under column one of such Schedules, or column 1 (General) of the Harmonized System, at the time the temporary duty is applied.

''(8)(A) The Secretary shall, to the extent practicable, administer the provisions of this subsection to the 8-digit level of classification under the Harmonized System.

''(B) The Secretary may issue such regulations as may be necessary to implement the provisions of this subsection.

''(9) For purposes of assisting the Secretary in carrying out this subsection—

''(A) the Commissioner of Customs and the Director of the Bureau of Census shall cooperate in providing the Secretary with timely information and data relating to the importation of Canadian fresh fruits and vegetables, and

''(B) importers shall report such information relating to Canadian fresh fruits and vegetables to the Commissioner of Customs at such time and in such manner as the Commissioner requires.

''(10) The authority to impose temporary duties under this subsection expires on the 20th anniversary of the date on which the Agreement enters into force.

''(b) MEAT IMPORT ACT OF 1979.—[Amended section 2 of Pub. L. 88–482, set out as a note under section 2253 of this title.]

''(c) AGRICULTURAL ADJUSTMENT ACT.—[Amended section 624 of Title 7, Agriculture.]

''(d) IMPORTATION OF ANIMAL VACCINES.—[Amended section 152 of Title 21, Food and Drugs.]

''(e) IMPORTATION OF SEEDS.—[Amended section 1582 of Title 7, Agriculture.]

''(f) PLANT AND ANIMAL HEALTH REGULATIONS.—

''(1) [Amended section 150bb of Title 7.]

''(2) [Amended section 150cc of Title 7.]

''(3) [Amended sections 154 and 156 of Title 7.]

''(4) [Amended section 2803 of Title 7.]

''(5) [Amended section 1306 of this title.]

''SEC. 302. RELIEF FROM IMPORTS.

''(a) RELIEF FROM IMPORTS OF CANADIAN ARTICLES.—

''(1) A petition requesting action under this section for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the United States International Trade Commission (hereafter in this section referred to as the 'Commission') by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry. The Commission shall transmit a copy of any petition filed under this paragraph to the United States Trade Representative.

''(2)(A) Upon the filing of a petition under paragraph (1), the Commission shall promptly initiate an investigation to determine whether, as a result of a reduction or elimination of a duty provided for under the United States-Canada Free-Trade Agreement, an article originating in Canada is being imported into the United States in such increased quantities, in absolute terms, and under such conditions, so that imports of such Canadian article, alone, constitute a substantial cause of serious injury to the domestic industry producing an article like, or directly competitive with, the imported article.

''(B) The provisions of—

''(i) paragraphs (2), (3), (4), (6), and (7) of subsection (b), other than paragraph (2)(B), and

''(ii) subsection (c),

of section 201 of the Trade Act of 1974 (19 U.S.C. 2251), as in effect on June 1, 1988, shall apply with respect to any investigation initiated under subparagraph (A).

''(C) By no later than the date that is 120 days after the date on which an investigation is initiated under subparagraph (A), the Commission shall make a determination under subparagraph (A) with respect to such investigation.

''(D) If the determination made by the Commission under subparagraph (A) with respect to imports of an article is affirmative, the Commission shall find and recommend to the President the amount of import relief that is necessary to remedy the injury found by the Commission in such affirmative determination, which shall be limited to that set forth in paragraph (3)(C).

''(E)(i) By no later than the date that is 30 days after the date on which a determination is made under subparagraph (A) with respect to an investigation, the Commission shall submit to the President a report on the determination and the basis for the determination. The report shall include any dissenting or separate views and a transcript of the hearings and any briefs which were submitted to the Commission in the course of the investigation initiated under subparagraph (A).

''(ii) Any finding made under subparagraph (D) shall be included in the report submitted to the President under clause (i).

''(F) Upon submitting a report to the President under subparagraph (E), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

''(G) For purposes of this subsection—

''(i) The provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)) shall be applied with respect to determinations and findings made under this paragraph as if such determinations and findings were made under section 201 of the Trade Act of 1974 (19 U.S.C. 2251).

''(ii) The determination of whether an article originates in Canada shall be made in accordance with section 202 (including any proclamations issued under section 202).

''(3)(A) By no later than the date that is 30 days after the date on which the President receives the report of the Commission containing an affirmative determination made by the Commission under paragraph (2)(A), the President shall provide relief from imports of the article originating in Canada that is the subject of such determination to the extent that, and for such time (not to exceed 3 years) as the President determines to be necessary to remedy the injury found by the Commission.

''(B) The President is not required to provide import relief by reason of this paragraph if the President determines that the provision of such import relief is not in the national economic interest.

''(C) The import relief that the President is authorized to provide by reason of this paragraph with respect to an article originating in Canada is limited to—

''(i) the suspension of any further reductions provided for under the Agreement in the duty imposed on such article originating in Canada,

''(ii) an increase in the rate of duty imposed on such article originating in Canada to a level that does not exceed the lesser of—

''(I) the general subcolumn of the column 1 rate of duty set forth in the Harmonized Tariff Schedule of the United States that is imposed by the United States on such article from any other foreign country at the time such import relief is provided, or

''(II) the general subcolumn of the column 1 rate of duty set forth in the Harmonized Tariff Schedule of the United States that is imposed by the United States on such article from any other foreign country on the day before the date on which the Agreement enters into force [Jan. 1, 1989], or

''(iii) in the case of a duty applied on a seasonal basis to such article originating in Canada, an increase in the rate of duty imposed on such article originating in Canada to a level that does not exceed the general subcolumn of the column 1 rate of duty set forth in the Harmonized Tariff Schedule of the United States imposed by the United States on such article originating in Canada for the corresponding season immediately prior to the date on which the Agreement enters into force.

''(4)(A) No investigation may be initiated under paragraph (2)(A) with respect to any article for which import relief has been provided under this subsection.

''(B) No import relief may be provided under this subsection after the date that is 10 years after the date on which the Agreement enters into force [Jan. 1, 1989].

''(5) For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under paragraph (3) shall be treated as action taken under chapter I [1] of title II of such Act [19 U.S.C. 2251 et seq.].

''(b) RELIEF FROM IMPORTS FROM ALL COUNTRIES.—

''(1)(A) If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.], the Commission makes an affirmative determination (or a determination which is treated as an affirmative determination under such chapter by reason of section 330(d) of the Tariff Act of 1930 [19 U.S.C. 1330(d)]) that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry, the Commission shall also find (and report to the President at the time such injury determination is submitted to the President), whether imports from Canada of the article that is the subject of such investigation are substantial and are contributing importantly to such injury or threat thereof.

''(B)(i) In determining under subparagraph (A) whether imports of an article from Canada are substantial, the Commission shall not normally consider imports from Canada in the range of 5 to 10 percent or less of total imports of such article to be substantial.

''(ii) For purposes of this paragraph, the term 'contributing importantly' means an important cause, but not necessarily the most important cause, of the serious injury or threat thereof caused by imports.

''(2)(A) In determining whether to take action under chapter 1 of title II of the Trade Act of 1974 with respect to imports from Canada, the President shall determine whether imports from Canada of such article are substantial and contributing importantly to the serious injury or threat of serious injury found by the Commission.

''(B) In determining the nature and extent of action to be taken under chapter 1 of title II of the Trade Act of 1974, the President shall exclude from such action imports from Canada if the President has made a negative determination under subparagraph (A) regarding imports from Canada.

''(3)(A) If, under paragraph (2)(B), the President excludes imports from Canada from action taken under chapter 1 of title II of the Trade Act of 1974, the President may, if the President thereafter determines that a surge in imports from Canada of the article that is the subject of the action is undermining the effectiveness of the action, take appropriate action under such chapter with respect to such imports from Canada to include such imports in such action.

''(B)(i) If, under paragraph (2)(B), the President excludes imports from Canada from action taken under chapter 1 of title II of the Trade Act of 1974, any entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry for which such action is being taken under such chapter may request the Commission to conduct an investigation of imports from Canada of the article that is the subject of such action.

''(ii) Upon receiving a request under clause (i), the Commission shall conduct an investigation to determine whether a surge in imports from Canada of the article that is the subject of action being taken under chapter 1 of title II of the Trade Act of 1974 undermines the effectiveness of such action. The Commission shall submit the findings of such investigation to the President by no later than the date that is 30 days after the date on which such request is received by the Commission.

''(C) For purposes of this paragraph, the term 'surge' means a significant increase in imports over the trend for a reasonable, recent base period for which data are available.

''(c) Any entity that is representative of an industry may submit a petition for relief under subsection (a), under chapter 1 of title II of the Trade Act of 1974, or under both subsection (a) and such chapter at the same time. If petitions are submitted by such an entity under subsection (a) and such chapter at the same time, the Commission shall consider such petitions jointly.

''SEC. 303. ACTS IDENTIFIED IN NATIONAL TRADE ESTIMATES.

''With respect to any act, policy, or practice of Canada that is identified in the annual report submitted under section 181 of the Trade Act of 1974 (19 U.S.C. 2241), the United States Trade Representative shall include—

''(1) information with respect to the action taken regarding such act, policy, or practice, including but not limited to—

''(A) any action under section 301 of the Trade Act of 1974 [19 U.S.C. 2411] (including resolution through appropriate dispute settlement procedures),

''(B) any action under section 307 of the Trade and Tariff Act of 1984 [section 307 of Pub. L. 98–573, enacting section 2114d of this title and amending this section], and

''(C) negotiations or consultations, whether on a bilateral or multilateral basis; or

''(2) the reasons that no action was taken regarding such act, policy, or practice.

''SEC. 304. NEGOTIATIONS REGARDING CERTAIN SECTORS; BIENNIAL REPORTS.

''(a) IN GENERAL.—

''(1) The President is authorized to enter into negotiations with the Government of Canada for the purpose of concluding an agreement (including an agreement amending the Agreement) or agreements to—

''(A) liberalize trade in services in accordance with article 1405 of the Agreement;

''(B) liberalize investment rules;

''(C) improve the protection of intellectual property rights;

''(D) increase the value requirement applied for purposes of determining whether an automotive product is treated as originating in Canada or the United States; and

''(E) liberalize government procurement practices, particularly with regard to telecommunications.

''(2) As an exercise of the foreign relations powers of the President under the Constitution, the President will enter into immediate consultations with the Government of Canada to obtain the exclusion from the transport rates established under Canada's Western Grain Transportation Act of agricultural goods that originate in Canada and are shipped via east coast ports for consumption in the United States.

''(b) NEGOTIATING OBJECTIVES REGARDING SERVICES, INVESTMENT, AND INTELLECTUAL PROPERTY RIGHTS.—

''(1) The objectives of the United States in negotiations conducted under subsection (a)(1)(A) to liberalize trade in services include—

''(A) with respect to developing services sectors not covered in the Agreement, the elimination of those tariff, nontariff, and subsidy trade distortions that have potential to affect significant bilateral trade;

''(B) the elimination or reduction of measures grandfathered by the Agreement that deny or restrict national treatment in the provision of services;

''(C) the elimination of local presence requirements; and

''(D) the liberalization of government procurement of services.

In conducting such negotiations, the President shall consult with the services advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155).

''(2) The objectives of the United States in any negotiations conducted under subsection (a)(1)(B) to liberalize investment rules include—

''(A) the elimination of direct investment screening;

''(B) the extension of the principles of the Agreement to energy and cultural industries, to the extent such industries are not currently covered by the Agreement;

''(C) the elimination of technology transfer requirements and other performance requirements not currently barred by the Agreement; and

''(D) the subjection of all investment disputes to dispute resolution under chapter 18 of the Agreement.

In conducting such negotiations, the President shall consult with persons representing diverse interests in the United States in investment.

''(3) The objectives of the United States in any negotiations conducted under subsection (a)(1)(C) to improve the protection of intellectual property rights include—

''(A) the recognition and adequate protection of intellectual property, including copyrights, patents, process patents, trademarks, mask works, and trade secrets; and

''(B) the establishment of dispute resolution procedures and binational enforcement of intellectual property standards.

In conducting such negotiations, the President shall consult with persons representing diverse interests in the United States in intellectual property.

''(c) NEGOTIATING OBJECTIVES REGARDING AUTOMOTIVE PRODUCTS.—

''(1) In conducting negotiations under subsection (a)(1)(D) regarding the value requirement for automotive products, the President shall seek to conclude an agreement by no later than January 1, 1990, to increase the value requirement from 50 percent to at least 60 percent.

''(2) The President is authorized, through January 1, 1999, to proclaim any agreed increase in the value requirement.

''(3) As used in this section, the term 'value requirement' means the minimum percentage of the value of an automotive product that must be accounted for by the value of the materials in the product that originated in the United States or Canada, or both, plus the direct cost of processing or assembly performed in the United States or Canada, or both, with respect to the product.

''(d) NEGOTIATION OF LIMITATION ON POTATO TRADE.—

''(1) During the 5-year period beginning on the date of enactment of this Act [Sept. 28, 1988], the President is authorized to enter into negotiations with Canada for the purpose of obtaining an agreement to limit the exportation and importation of all potatoes between the United States and Canada, including seed potatoes, fresh, chilled or frozen potatoes, dried, desiccated or dehydrated potatoes, and potatoes otherwise prepared or preserved. Any agreement negotiated under this subsection shall provide for an annual limitation divided equally into each half of the year.

''(2) For the purpose of conducting negotiations under paragraph (1), the Secretary of Agriculture and the United States Trade Representative shall consult with representatives of the potato producing industry, including the Ad Hoc Potato Advisory Group and the United States/Canada Horticultural Industry Advisory Committee, to solicit their views on negotiations with Canada for reciprocal quantitative limits on the potato trade.

''(3) The President is authorized to direct the Secretary of the Treasury to—

''(A) carry out such actions as may be necessary or appropriate to ensure the attainment of the objectives of any agreement that is entered into under this section; and

''(B) enforce any quantitative limitation, restriction, and other terms contained in the agreement.

Such actions may include, but are not limited to, requirements that valid export licenses or other documentation issued by a foreign government be presented as a condition for the entry into the United States of any article that is subject to the agreement.

''(4) The provisions of section 1204 of the Agriculture and Food Act of 1981 (7 U.S.C. 1736j) and the last sentence of section 812 of the Agricultural Act of 1970 (7 U.S.C. 612c–3) shall not apply in the case of actions taken pursuant to this subsection.

''(e) CANADIAN CONTROLS ON FISH.—

''(1) Within 30 days of the application by Canada of export controls on unprocessed fish under statutes exempted from the Agreement under article 1203, or the application of landing requirements for fish caught in Canadian waters, the President shall take appropriate action to enforce United States rights under the General Agreement on Tariffs and Trade that are retained in article 1205 of the Agreement.

''(2) In enforcing the United States rights referred to in paragraph (1), the President has discretion to—

''(A) bring a challenge to the offending Canadian practices before the GATT;

''(B) retaliate against such offending practices;

''(C) seek resolution directly with Canada;

''(D) refer the matter for dispute resolution to the Canada-United States Trade Commission; or

''(E) take other action that the President considers appropriate to enforce such United States rights.

''(f) BIENNIAL REPORT.—The President shall submit to the Congress, at the close of each biennial period occurring after the date on which the Agreement enters into force [Jan. 1, 1989], a report regarding—

''(1) the status of the negotiations regarding agreements that the President is authorized to enter into with Canada under this section;

''(2) the effectiveness and operation of any agreement entered into under section 304 that is in force with respect to the United States;

''(3) the effectiveness of operation of the Agreement generally; and

''(4) the actions taken by the United States and Canada to implement further the objectives of the Agreement.

''SEC. 305. ENERGY.

''(a) ALASKAN OIL.—[Amended section 2406 of the Appendix to Title 50, War and National Defense.]

''(b) URANIUM.—[Amended section 2201 of Title 42, The Public Health and Welfare.]

''SEC. 306. LOWERED THRESHOLD FOR GOVERNMENT PROCUREMENT UNDER TRADE AGREEMENTS ACT OF 1979 IN THE CASE OF CERTAIN CANADIAN PRODUCTS.

[Amended section 2518 of this title.]

''SEC. 307. TEMPORARY ENTRY FOR BUSINESS PERSONS.

''(a) NONIMMIGRANT TRADERS AND INVESTORS.—Upon a basis of reciprocity secured by the United States-Canada Free-Trade Agreement, a citizen of Canada, and the spouse and children of any such citizen if accompanying or following to join such citizen, may, if otherwise eligible for a visa and if otherwise admissible into the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), be considered to be classifiable as a nonimmigrant under section 101(a)(15)(E) of such Act (8 U.S.C. 1101(a)(15)(E)) if entering solely for a purpose specified in Annex 1502.1 (United States of America), Part B—Traders and Investors, of such Agreement, but only if any such purpose shall have been specified in such Annex as of the date of entry into force of such Agreement [Jan. 1, 1989].

''(b) NONIMMIGRANT PROFESSIONALS.—[Amended section 1184 of Title 8, Aliens and Nationality.]

''SEC. 308. AMENDMENT TO SECTION 5136 OF THE REVISED STATUTES.

[Amended section 24 of Title 12, Banks and Banking.]

''SEC. 309. STEEL PRODUCTS.

''Nothing in this Act shall preclude any discussion or negotiation between the United States and Canada in order to conclude voluntary restraint agreements or mutually agreed quantitative restrictions on the volume of steel products entering the United States from Canada.

''TITLE IV—BINATIONAL PANEL DISPUTE SETTLEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY CASES.

''SEC. 401. AMENDMENTS TO SECTION 516A OF THE TARIFF ACT OF 1930.

[Amended section 1516a of this title.]

''SEC. 402. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

''(a) JURISDICTION OF COURT OF INTERNATIONAL TRADE.—[Amended section 1581 of Title 28, Judiciary and Judicial Procedure.]

''(b) RELIEF IN COURT OF INTERNATIONAL TRADE.—[Amended section 2643 of Title 28.]

''(c) DECLARATORY JUDGMENTS.—[Amended section 2201 of Title 28.]

''(d) ACTIONS UNDER THE AGREEMENT.—[Enacted section 1584 of Title 28.]

''SEC. 403. CONFORMING AMENDMENTS TO THE TARIFF ACT OF 1930.

[Amended sections 1502, 1514, 1677, and 1677f of this title.]

''SEC. 404. AMENDMENTS TO ANTIDUMPING AND COUNTERVAILING DUTY LAW.

''Any amendment enacted after the Agreement enters into force with respect to the United States [Jan. 1, 1989] that is made to—

''(1) section 303 [19 U.S.C. 1303] or title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.], or any successor statute, or

''(2) any other statute which—

''(A) provides for judicial review of final determinations under such section, title, or statute, or

''(B) indicates the standard of review to be applied,

shall apply to Canada only to the extent specified in such amendment.

''SEC. 405. ORGANIZATIONAL AND ADMINISTRATIVE PROVISIONS REGARDING THE IMPLEMENTATION OF CHAPTERS 18 AND 19 OF THE AGREEMENT.

''(a) APPOINTMENT OF INDIVIDUALS TO PANELS AND COMMITTEES.—

''(1)(A) There is established within the interagency organization established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872) an interagency group which shall—

''(i) be chaired by the United States Trade Representative (hereafter in this section referred to as the 'Trade Representative'), and

''(ii) consist of such officers (or the designees thereof) of the Government of the United States as the Trade Representative considers appropriate.

''(B) The interagency group established under subparagraph (A) shall, in a manner consistent with chapter 19 of the Agreement—

''(i) prepare by January 3 of each calendar year—

''(I) a list of individuals who are qualified to serve as members of binational panels convened under chapter 19 of the Agreement, and

''(II) a list of individuals who are qualified to serve on extraordinary challenge committees convened under such chapter,

''(ii) if the Trade Representative makes a request under paragraph (5)(A)(i) with respect to a final candidate list during any calendar year, prepare by July 1 of such calendar year a list of those individuals who are qualified to be added to that final candidate list,

''(iii) exercise oversight of the administration of the United States Secretariat that is authorized to be established under subsection (e), and

''(iv) make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees under chapter 19 of the Agreement.

''(2)(A) The Trade Representative shall select individuals from the respective lists prepared by the interagency group under paragraph (1)(B)(i) for placement on a preliminary candidate list of individuals eligible to serve as members of binational panels under Annex 1901.2 of the Agreement and a preliminary candidate list of individuals eligible for selection as members of extraordinary challenge committees under Annex 1904.13 of the Agreement.

''(B) The selection of individuals for—

''(i) placement on lists prepared by the interagency group under clause (i) or (ii) of paragraph (1)(B),

''(ii) placement on preliminary candidate lists under subparagraph (A),

''(iii) placement on final candidate lists under paragraph (3),

''(iv) placement by the Trade Representative on the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement, and

''(v) appointment by the Trade Representative for service on binational panels and extraordinary challenge committees convened under chapter 19 of the Agreement,

shall be made on the basis of the criteria provided in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement and shall be made without regard to political affiliation.

''(C) For purposes of applying section 1001 of title 18, United States Code, the written or oral responses of individuals to inquiries of the interagency group established under paragraph (1) or the Trade Representative regarding their personal and professional qualifications, and financial and other relevant interests, that bear on their suitability for the placements and appointments described in subparagraph (B), shall be treated as matters within the jurisdiction of an agency of the United States.

''(3)(A) By no later than January 3 of each calendar year, the Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter in this section referred to as the 'appropriate Congressional Committees') the preliminary candidate lists of those individuals selected by the Trade Representative under paragraph (2)(A) to be candidates eligible to serve on binational panels or extraordinary challenge committees convened pursuant to chapter 19 of the Agreement during the 1-year period beginning on April 1 of such calendar year.

''(B) Upon submission of the preliminary candidate lists under subparagraph (A) to the appropriate Con-

gressional Committees, the Trade Representative shall consult with the appropriate Congressional Committees with regard to the individuals listed on the preliminary candidate lists.

''(C) The Trade Representative may add or delete individuals from the preliminary candidate lists submitted under subparagraph (A) after consulting the appropriate Congressional Committees with regard to such addition or deletion. The Trade Representative shall provide to the appropriate Congressional Committees written notice of any addition or deletion of an individual from the preliminary candidate lists.

''(4)(A) By no later than March 31 of each calendar year, the Trade Representative shall submit to the appropriate Congressional Committees the final candidate lists of those individuals selected by the Trade Representative to be candidates eligible to serve on binational panels and extraordinary challenge committees convened pursuant to chapter 19 of the Agreement during the 1-year period beginning on April 1 of such calendar year. An individual may be included on a final candidate list only if written notice of the addition of such individual to the preliminary candidate list was submitted to the appropriate Congressional Committees at least 15 days before the date on which that final candidate list is submitted to the appropriate Congressional Committees under this subparagraph.

''(B) Except as provided in paragraph (5), no additions may be made to the final candidate lists after the final candidate lists are submitted to the appropriate Congressional Committees under subparagraph (A).

''(5)(A) If, after the Trade Representative has submitted the final candidate lists to the appropriate Congressional Committees under paragraph (4)(A) for a calendar year and before July 1 of such calendar year, the Trade Representative determines that additional individuals need to be added to a final candidate list, the Trade Representative shall—

''(i) request the interagency group established under paragraph (1)(A) to prepare a list of individuals who are qualified to be added to such candidate list,

''(ii) select individuals from the list prepared by the interagency group under paragraph (1)(B)(ii) to be included in a proposed amendment to such final candidate list, and

''(iii) by no later than July 1 of such calendar year, submit to the appropriate Congressional Committees the proposed amendments to such final candidate list developed by the Trade Representative under clause (ii).

''(B) Upon submission of a proposed amendment under subparagraph (A)(iii) to the appropriate Congressional Committees, the Trade Representative shall consult with the appropriate Congressional Committees with regard to the individuals included in the proposed amendment.

''(C) The Trade Representative may add or delete individuals from any proposed amendment submitted under subparagraph (A)(iii) after consulting the appropriate Congressional Committees with regard to such addition or deletion. The Trade Representative shall provide to the appropriate Congressional Committees written notice of any addition or deletion of an individual from the proposed amendment.

''(D)(i) If the Trade Representative submits under subparagraph (A)(iii) in any calendar year a proposed amendment to a final candidate list, the Trade Representative shall, by no later than September 30 of such calendar year, submit to the appropriate Congressional Committees the final form of such amendment. On October 1 of such calendar year, such amendment shall take effect and the individuals included in the final form of such amendment shall be added to the final candidate list.

''(ii) An individual may be included in the final form of an amendment submitted under clause (i) only if written notice of the addition of such individual to the proposed form of such amendment was submitted to the appropriate Congressional Committees at least 15 days before the date on which the final form of such amendment is submitted under clause (i).

''(iii) Individuals added to a final candidate list under clause (i) shall be eligible to serve on binational panels or extraordinary challenge committees convened pursuant to chapter 19 of the Agreement, as the case may be, during the 6-month period beginning on October 1 of the calendar year in which such addition occurs.

''(iv) No additions may be made to the final form of an amendment described in clause (i) after the final form of such amendment is submitted to the appropriate Congressional Committees under clause (i).

''(6)(A) The Trade Representative is the only officer of the Government of the United States authorized to act on behalf of the Government of the United States in making any selection or appointment of an individual to—

''(i) the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement, or

''(ii) the binational panels or extraordinary challenge committees convened pursuant to chapter 19 of the Agreement,

that is to be made solely or jointly by the Government of the United States under the terms of the Agreement.

''(B) Except as otherwise provided in paragraph (7)(B), the Trade Representative may—

''(i) select an individual for placement on the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement during the 1-year period beginning on April 1 of any calendar year,

''(ii) appoint an individual to serve as one of those members of any binational panel or extraordinary challenge committee convened pursuant to chapter 19 of the Agreement during such 1-year period who, under the terms of the Agreement, are to be appointed solely by the Government of the United States, or

''(iii) act to make a joint appointment with the Government of Canada, under the terms of the Agreement, of any individual who is a citizen or national of the United States to serve as any other member of such a panel or committee,

only if such individual is on the appropriate final candidate list that was submitted to the appropriate Congressional Committees under paragraph (4)(A) during such calendar year or on such list as it may be amended under paragraph (5)(D)(i).

''(7)(A) Except as otherwise provided in this paragraph, no individual may—

''(i) be selected by the Government of the United States for placement on the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement, or

''(ii) be appointed solely or jointly by the Government of the United States to serve as a member of a binational panel or extraordinary challenge committee convened pursuant to chapter 19 of the Agreement,

during the 1-year period beginning on April 1 of any calendar year for which the Trade Representative has not met the requirements of this subsection.

''(B)(i) Notwithstanding paragraphs (3), (4), or (6)(B) (other than paragraph (3)(A)), individuals listed on the preliminary candidate lists submitted to the appropriate Congressional Committees under paragraph (3)(A) may—

''(I) be selected by the Trade Representative for placement on the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement during the 3-month period beginning on the date on which the Agreement enters into force, and

''(II) be appointed solely or jointly by the Trade Representative under the terms of the Agreement to serve as members of binational panels or extraordinary challenge committees that are con-

vened pursuant to chapter 19 of the Agreement during such 3-month period.

''(ii) If the Agreement enters into force after January 3, 1989, the provisions of this subsection shall be applied with respect to the calendar year in which the Agreement enters into force—

''(I) by substituting 'the date that is 30 days after the date on which the Agreement enters into force' for 'January 3 of each calendar year' in paragraphs (1)(B)(i) and (3)(A), and

''(II) by substituting 'the date that is 3 months after the date on which the Agreement enters into force' for 'March 31 of each calendar year' in paragraph (4)(A).

''(b) STATUS OF PANELISTS.—Notwithstanding any other provision of law, individuals appointed by the United States to serve on panels or committees convened pursuant to chapter 19 of the Agreement, and individuals designated to assist such appointed individuals, shall not be considered to be employees or special employees of, or to be otherwise affiliated with, the Government of the United States.

''(c) IMMUNITY OF PANELISTS.—With the exception of acts described in section 777f(d)(3) [777(d)(3)] of the Tariff Act of 1930, as added by this Act [19 U.S.C. 1677f(d)(3)], individuals serving on panels or committees convened pursuant to chapter 19 of the Agreement, and individuals designated to assist the individuals serving on such panels or committees, shall be immune from suit and legal process relating to acts performed by such individuals in their official capacity and within the scope of their functions as such panelists or committee members or assistants to such panelists or committee members.

''(d) REGULATIONS.—The administering authority under title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.], the United States International Trade Commission, and the United States Trade Representative may promulgate such regulations as are necessary or appropriate to carry out actions in order to implement their respective responsibilities under chapters 18 and 19 of the Agreement. Initial regulations to carry out such functions shall be issued prior to the date of entry into force of the Agreement [Jan. 1, 1989].

''(e) ESTABLISHMENT OF UNITED STATES SECRETARIAT.—

''(1) The President is authorized to establish within any department or agency of the Federal Government a United States Secretariat which, subject to the oversight of the interagency group established under subsection (a)(1)(A), shall facilitate—

''(A) the operation of chapters 18 and 19 of the Agreement, and

''(B) the work of the binational panels and extraordinary challenge committees convened under chapters 18 and 19 of the Agreement.

''(2) The United States Secretariat established by the President under paragraph (1) shall not be considered to be an agency for purposes of section 552 of title 5, United States Code.

''SEC. 406. AUTHORIZATION OF APPROPRIATIONS FOR THE SECRETARIAT, THE PANELS, AND THE COMMITTEES.

''(a) THE SECRETARIAT.—There are authorized to be appropriated to the department or agency within which the United States Secretariat described in chapter 19 of the Agreement is established the lesser of—

''(1) such sums as may be necessary, or

''(2) $5,000,000,

for each fiscal year succeeding fiscal year 1988 for the establishment and operations of such United States Secretariat and for the payment of the United States share of the expenses of the dispute settlement proceedings under chapter 18 of the Agreement.

''(b) PANELS AND COMMITTEES.—

''(1) There are authorized to be appropriated to the Office of the United States Trade Representative for fiscal year 1990, $1,492,000 to pay during such fiscal year the United States share of the expenses of binational panels and extraordinary challenge committees convened pursuant to chapter 19 of the Agreement.

''(2) The United States Trade Representative is authorized to transfer to any department or agency of the United States, from sums appropriated pursuant to the authorization provided under paragraph (1) or section 141(g)(1) of the Trade Act of 1974 [19 U.S.C. 2171(g)(1)], such funds as may be necessary to facilitate the payment of the expenses described in paragraph (1).

''(3) Funds appropriated for the payment of expenses described in paragraph (1) during any fiscal year may be expended only to the extent such funds do not exceed the amount authorized to be appropriated under paragraph (1) for such fiscal year. This paragraph shall apply, notwithstanding any law enacted after the date of enactment of this Act [Sept. 28, 1988], unless such subsequent law specifically provides that this paragraph shall not apply and specifically cites this paragraph.

''(4) If the Canadian Secretariat described in chapter 19 of the Agreement provides funds during any fiscal year for the purpose of paying, in accordance with Annex 1901.2 of the Agreement, the Canadian share of the expenses of binational panels, the United States Secretariat established under section 405(e)(1) may hereafter retain and use such funds for such purposes.

''SEC. 407. TESTIMONY AND PRODUCTION OF PAPERS IN EXTRAORDINARY CHALLENGES.

''(a) AUTHORITY OF EXTRAORDINARY CHALLENGE COMMITTEE TO OBTAIN INFORMATION.—If an extraordinary challenge committee (hereinafter referred to in this section as the 'committee') is convened pursuant to article 1904(13) of the Agreement, and the allegations before the committee include a matter referred to in article 1904(13)(a)(i) of the Agreement, for the purposes of carrying out its functions and duties under Annex 1904.13 of the Agreement, the committee—

''(1) shall have access to, and the right to copy, any document, paper, or record pertinent to the subject matter under consideration, in the possession of any individual, partnership, corporation, association, organization, or other entity,

''(2) may summon witnesses, take testimony, and administer oaths,

''(3) may require any individual, partnership, corporation, association, organization, or other entity to produce documents, books, or records relating to the matter in question, and

''(4) may require any individual, partnership, corporation, association, organization, or other entity to furnish in writing, in such detail and in such form as the committee may prescribe, information in its possession pertaining to the matter.

Any member of the committee may sign subpoenas, and members of the committee, when authorized by the committee, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

''(b) WITNESSES AND EVIDENCE.—The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under subsection (a) may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena authorized under subsection (a), the committee may request the Attorney General of the United States to invoke the aid of any district or territorial court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Such court, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, association, organization, or other entity, issue an order requiring such individual or entity to appear before the committee, or to produce documentary evidence if so ordered or to give evidence concerning the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

''(c) MANDAMUS.—Any court referred to in subsection (b) shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this section or any order of the committee made in pursuance thereof.

''(d) DEPOSITIONS.—The committee may order testimony to be taken by deposition at any stage of the committee review. Such deposition may be taken before any person designated by the committee and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the direction of such person, and shall then be subscribed by the deponent. Any individual, partnership, corporation, association, organization or other entity may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the committee, as provided in this section.

''SEC. 408. REQUESTS FOR REVIEW OF CANADIAN ANTIDUMPING AND COUNTERVAILING DUTY DETERMINATIONS.

''(a) REQUESTS FOR REVIEW BY THE UNITED STATES.—In the case of a final antidumping or countervailing duty determination of a competent investigating authority of Canada, as defined in article 1911 of the Agreement, requests by the United States for binational panel review under article 1904 of the Agreement shall be made by the United States Secretary, described in article 1909(4) of the Agreement.

''(b) REQUESTS FOR REVIEW BY A PERSON.—In the case of a final antidumping or countervailing duty determination of a competent investigating authority of Canada, as defined in article 1911 of the Agreement, a person, within the meaning of article 1904(5) of the Agreement, may request a binational panel review of such determination by filing with the United States Secretary, described in article 1909(4) of the Agreement, such a request within the time limit provided for in article 1904(4) of the Agreement. The receipt of such request by the United States Secretary shall be deemed to be a request for binational panel review within the meaning of article 1904(4) of the Agreement. Such request shall contain such information and be in such form, manner, and style as the administering authority shall prescribe by regulations. The request for such panel review shall not preclude the United States, Canada, or any other person from challenging before a binational panel the basis for a particular request for review.

''(c) SERVICE OF REQUEST FOR REVIEW.—Whenever binational panel review is requested under this section, the United States Secretary shall serve a copy of the request on all persons who would otherwise be entitled under Canadian law to commence procedures for judicial review of a final antidumping or countervailing duty determination made by a competent investigating authority of Canada.

''SEC. 409. SUBSIDIES.

''(a) NEGOTIATING AUTHORITY.—

''(1) The President is authorized to enter into an agreement with Canada, including an agreement to amend the Agreement, on rules applicable to trade between the United States and Canada that—

''(A) deal with unfair pricing and government subsidization, and

''(B) provide for increased discipline on subsidies.

''(2)(A) The objectives of the United States in negotiating an agreement under paragraph (1) include (but are not limited to)—

''(i) achievement, on an expedited basis, of increased discipline on government production and export subsidies that have a significant impact, directly or indirectly, on bilateral trade between the United States and Canada; and

''(ii) attainment of increased and more effective discipline on those Canadian Government (including provincial) subsidies having the most significant adverse impact on United States producers that compete with subsidized products of Canada in the markets of the United States and Canada.

''(B) Special emphasis should be given in negotiating an agreement under paragraph (1) to obtain discipline on Canadian subsidy programs that adversely affect United States industries which directly compete with subsidized imports.

''(3) The United States members of the working group established under article 1907 of the Agreement shall consult regularly with the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and advisory committees established under section 135 of the Trade Act of 1974 [19 U.S.C. 2155] regarding—

''(A) the issues being considered by the working group; and

''(B) as appropriate, the objectives and strategy of the United States in the negotiations.

''(4) Notwithstanding any other provision of this Act or of any other law, the provisions of section 151 of the Trade Act of 1974 (19 U.S.C. 2191) shall not apply to any bill or joint resolution that implements an agreement entered into under paragraph (1), unless the President determines and notifies the Congress that such agreement—

''(A) will provide greater discipline over government subsidies and no less discipline over unfair pricing practices by producers than that provided by the agreements described in paragraphs (5) and (6) of section 2[(c)] of the Trade Agreements Act of 1979 [19 U.S.C. 2503(c)(5), (6)] (the Subsidies Code and Antidumping Code), respectively, taking into account the effects of the Agreement, and

''(B) will neither undermine such multilateral discipline nor detract from United States efforts to increase such discipline on a multilateral basis in, or subsequent to, the Uruguay Round of multilateral trade negotiations.

''(b) IDENTIFICATION OF INDUSTRIES FACING SUBSIDIZED IMPORTS.—

''(1) Any entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a United States industry and has reason to believe that—

''(A)(i) as a result of implementation of provisions of the Agreement, the industry is likely to face increased competition from subsidized Canadian imports with which it directly competes; or

''(ii) the industry is likely to face increased competition from subsidized imports with which it directly competes from any other country designated by the President, following consultations with the Congress, as benefitting from a reduction of tariffs or other trade barriers under a trade agreement that enters into force after January 1, 1989; and

''(B) the industry is likely to experience a deterioration of its competitive position before rules and disciplines relating to the use of government subsidies have been developed with respect to such country;

may file a petition with the United States Trade Representative (hereafter referred to in this section as the 'Trade Representative') to be identified under this section.

''(2) Within 90 days of receipt of a petition under paragraph (1), the Trade Representative, in consultation with the Secretary of Commerce, shall decide whether to identify the industry on the basis that there is a reasonable likelihood that the industry may face both the subsidization described in paragraph (1)(A) and the deterioration described in paragraph (1)(B).

''(3) At the request of an entity that is representative of an industry identified under paragraph (2), the Trade Representative shall—

''(A) compile and make available to the industry information under section 308 of the Trade Act of 1974 [19 U.S.C. 2418],

''(B) recommend to the President that an investigation by the United States International Trade

Commission be requested under section 332 of the Tariff Act of 1930 [19 U.S.C. 1332], or

''(C) take actions described in both subparagraphs (A) and (B).

The industry may request the Trade Representative to take appropriate action to update (as often as annually) any information obtained under subparagraph (A) or (B), or both, as the case may be, until an agreement on adequate rules and disciplines relating to government subsidies is reached.

''(4)(A) The Trade Representative and the Secretary of Commerce shall review information obtained under paragraph (3) and consult with the industry identified under paragraph (2) with a view to deciding whether any action is appropriate under section 301 of the Trade Act of 1974 [19 U.S.C. 2411], including the initiation of an investigation under section 302(c) of that Act [19 U.S.C. 2412(c)] (in the case of the Trade Representative), or under subtitle A of title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.], including the initiation of an investigation under section 702(a) of that Act [19 U.S.C. 1671a(a)] (in the case of the Secretary of Commerce).

''(B) In determining whether to initiate any investigation under section 301 of the Trade Act of 1974 [19 U.S.C. 2411] or any other trade law, other than title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.], the Trade Representative, after consultation with the Secretary of Commerce—

''(i) shall seek the advice of the advisory committees established under section 135 of the Trade Act of 1974 [19 U.S.C. 2155];

''(ii) shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives;

''(iii) shall coordinate with the interagency committee established under section 242 of the Trade Expansion Act of 1962 [19 U.S.C. 1872]; and

''(iv) may ask the President to request advice from the United States International Trade Commission.

''(C) In the event an investigation is initiated under section 302(c) of the Trade Act of 1974 [19 U.S.C. 2412(c)] as a result of a review under this paragraph and the President, following such investigation (including any applicable dispute settlement proceedings under the Agreement or any other trade agreement), determines to take action under section 301(a) of such Act [19 U.S.C. 2411(a)], the President shall give preference to actions that most directly affect the products that benefit from governmental subsidies and were the subject of the investigation, unless there are no significant imports of such products or the President otherwise determines that application of the action to other products would be more effective.

''(5) Any decision, whether positive or negative, or any action by the Trade Representative or the Secretary of Commerce under this section shall not in any way—

''(A) prejudice the right of any industry to file a petition under any trade law,

''(B) prejudice, affect, or substitute for, any proceeding, investigation, determination, or action by the Secretary of Commerce, the United States International Trade Commission, or the Trade Representative pursuant to such a petition,

''(C) prejudice, affect, substitute for, or obviate any proceeding, investigation, or determination under section 301 of the Trade Act of 1974 [19 U.S.C. 2411], title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.], or any other trade law.

''(6) Nothing in this subsection may be construed to alter in any manner the requirements in effect before the enactment of this Act [Sept. 28, 1988] for standing under any law of the United States or to add any additional requirements for standing under any law of the United States.

''SEC. 410. TERMINATION OF AGREEMENT.

''(a) IN GENERAL.—If—

''(1) no agreement is entered into between the United States and Canada on a substitute system of rules for antidumping and countervailing duties before the date that is 7 years after the date on which the Agreement enters into force [Jan. 1, 1989], and

''(2) the President decides not to exercise the rights of the United States under article 1906 of the Agreement to terminate the Agreement,

the President shall submit to the Congress a report on such decision which explains why continued adherence to the Agreement is in the national economic interest of the United States. In calculating the 7-year period referred to in paragraph (1), any time during which Canada is a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act [19 U.S.C. 3301(4)]) shall be disregarded.

''(b) TRANSITION PROVISIONS.—

''(1) If on the date on which the Agreement should cease to be in force an investigation or enforcement proceeding concerning the violation of a protective order issued under section 777(d) of the Tariff Act of 1930 (as amended by this Act) [19 U.S.C. 1677f(d)] or a Canadian undertaking is pending, such investigation or proceeding shall continue and sanctions may continue to be imposed in accordance with the provisions of such section.

''(2) If on the date on which the Agreement should cease to be in force a binational panel review under article 1904 of the Agreement is pending, or has been requested, with respect to a determination to which section 516A(g)(2) of the Tariff Act of 1930 (as added by this Act) [19 U.S.C. 1516a(g)(2)] applies, such determination shall be reviewable under section 516A(a) of the Tariff Act of 1930. In the case of a determination to which the provisions of this paragraph apply, the time limits for commencing an action under section 516A(a)(2)(A) of the Tariff Act of 1930 shall not begin to run until the date on which the Agreement ceases to be in force.

''TITLE V—EFFECTIVE DATES AND SEVERABILITY

''SEC. 501. EFFECTIVE DATES.

''(a) IN GENERAL.—Except as provided in subsection (b), the provisions of this Act, and the amendments made by this Act, shall take effect on the date the Agreement enters into force [Jan. 1, 1989].

[A Presidential Memorandum on the Canada-United States Free-Trade Agreement, dated Dec. 31, 1988, directing the Secretary of State to exchange notes with the Government of Canada to provide for the entry into force of the Agreement on Jan. 1, 1989, is set out in 24 Weekly Compilation of Presidential Documents 1688, Jan. 2, 1989. See, also, confirmation by Office of the United States Trade Representative, 54 F.R. 505.]

''(b) EXCEPTIONS.—Sections 1 and 2, title I, section 304 (except subsection (f)), section 309, this section and section 502 shall take effect on the date of enactment of this Act [Sept. 28, 1988].

''(c) TERMINATION OR SUSPENSION OF AGREEMENT.—

''(1) TERMINATION OF AGREEMENT.—On the date the Agreement ceases to be in force, the provisions of this Act (other than this paragraph and section 410(b)), and the amendments made by this Act, shall cease to have effect.

''(2) EFFECT OF AGREEMENT SUSPENSION.—An agreement by the United States and Canada to suspend the operation of the Agreement shall not be deemed to cause the Agreement to cease to be in force within the meaning of paragraph (1).

''(3) SUSPENSION RESULTING FROM NAFTA.—On the date the United States and Canada agree to suspend the operation of the Agreement by reason of the entry into force between them of the North American Free Trade Agreement, the following provisions of this Act are suspended and shall remain suspended until such time as the suspension of the Agreement may be terminated:

''(A) Sections 204(a) and (b) and 205(a).

''(B) Sections 302 and 304(f).
''(C) Sections 404, 409, and 410(b).

''SEC. 502. SEVERABILITY.

''If any provision of this Act, any amendment made by this Act, or the application of such a provision or amendment to any person or circumstances is held to be invalid, the remainder of this Act, the remaining amendments made by this Act, and the application of such provision or amendment to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.''

[For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

[Amendment by section 107 of Pub. L. 103–182 to section 501(c) of Pub. L. 100–449, set out above, effective on the date the North American Free Trade Agreement enters into force between the United States and Canada [Jan. 1, 1994], see section 109(a)(2) of Pub. L. 103–182, set out as an Effective Date; Termination of NAFTA Status note under section 3311 of this title.]

[Section 308(b) of Pub. L. 103–182 provided that: ''The amendments made by subsection (a) [amending section 301(a) of Pub. L. 100–449, set out above] take effect on the date of the enactment of this Act [Dec. 8, 1993].'']

[Amendment by section 413 of Pub. L. 103–182 to section 410(a) of Pub. L. 100–449, set out above, effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], but not applicable to any final determination described in section 1516a(a)(1)(B) or (2)(B)(i) to (iii) of this title, notice of which is published in the Federal Register before such date, or to a determination described in section 1516a(a)(2)(B)(vi) of this title, notice of which is received by the Government of Canada before such date, or to any binational panel review under the United States-Canada Free-Trade Agreement, or any extraordinary challenge arising out of such review, that was commenced before such date, see section 416 of Pub. L. 103–182, set out as an Effective Date note under section 3431 of this title.]

[For provisions relating to effect of termination of NAFTA country status on the provisions of sections 401 to 416 of Pub. L. 103–182, see section 3451 of this title.]

Plan Amendments Not Required Until January 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1801–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

United States-Israel Free Trade Area Implementation

Pub. L. 99–47, June 11, 1985, 99 Stat. 82, as amended by Pub. L. 104–234, § 1, Oct. 2, 1996, 110 Stat. 3058, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'United States-Israel Free Trade Area Implementation Act of 1985'.

''SEC. 2. PURPOSES.

''The purposes of this Act are—

''(1) to approve and implement the agreement on the establishment of a free trade area between the United States and Israel negotiated under the authority of section 102 of the Trade Act of 1974 [19 U.S.C. 2112];

''(2) to strengthen and develop the economic relations between the United States and Israel for their mutual benefit; and

''(3) to establish free trade between the two nations through the removal of trade barriers.

''SEC. 3. APPROVAL OF A FREE TRADE AREA AGREEMENT.

''Pursuant to sections 102 and 151 of the Trade Act of 1974 (19 U.S.C. 2112; 2191), the Congress approves—

''(1) the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (hereinafter in this Act referred to as 'the Agreement') entered into on April 22, 1985, and submitted to the Congress on April 29, 1985, and

''(2) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on April 29, 1985.

''SEC. 4. PROCLAMATION AUTHORITY.

''(a) Tariff Modifications.—Except as provided in subsection (c), the President may proclaim—

''(1) such modifications or continuance of any existing duty,

''(2) such continuance of existing duty-free or excise treatment, or

''(3) such additional duties,

as the President determines to be required or appropriate to carry out the schedule of duty reductions with respect to Israel set forth in annex 1 of the Agreement.

''(b) Additional Tariff Modification Authority.—Except as provided in subsection (c), whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the Agreement, the President may proclaim—

''(1) such withdrawal, suspension, modification, or continuance of any duty,

''(2) such continuance of existing duty-free or excise treatment, or

''(3) such additional duties,

as the President determines to be required or appropriate to carry out the Agreement.

''(c) Exception to Authority.—No modification of any duty imposed on any article provided for in paragraph (4) of annex 1 of the Agreement that may be proclaimed under subsection (a) or (b) shall take effect prior to January 1, 1995.

''SEC. 5. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES LAW.

''(a) United States Statutes To Prevail in Conflict.—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is in conflict with—

''(1) title IV of the Trade and Tariff Act of 1984 [title IV of Pub. L. 98–573, amending this section and enacting provisions set out below], or

''(2) any other statute of the United States,

shall be given effect under the laws of the United States.

''(b) Implementing Regulations.—Regulations that are necessary or appropriate to carry out actions proposed in any statement of proposed administrative action submitted to the Congress under section 102 of the Trade Act of 1974 (19 U.S.C. 2112) in order to implement the Agreement shall be prescribed. Initial regulations to carry out such action shall be issued within one year after the date of the entry into force of the Agreement.

''(c) Changes in Statutes To Implement a Requirement, Amendment, or Recommendation.—

''(1) Except as otherwise provided in paragraph (2), the provisions of section 3(c) of the Trade Agreements Act of 1979 (19 U.S.C. 2504(c)) shall apply with respect to the Agreement and—

''(A) no requirement of, amendment to, or recommendation under the Agreement shall be implemented under United States law, and

''(B) no amendment, repeal, or enactment of a statute of the United States to implement any such requirement, amendment, or recommendation shall enter into force with respect to the United States, unless there has been compliance with the provisions of section 3(c) of the Trade Agreements Act of 1979.

''(2) The provisions of section 3(c)(4) of the Trade Agreements Act of 1979 (19 U.S.C. 2504(c)(4)) shall apply to any bill implementing any requirement of, amendment to, or recommendation made under, the Agreement that reduces or eliminates any duty imposed on any article provided for in paragraph (4) of Annex 1 of the Agreement only if—

''(A) any reduction of such duty provided in such bill—

''(i) takes effect after December 31, 1989, and

''(ii) takes effect gradually over the period that begins on January 1, 1990, and ends on December 31, 1994,

''(B) any elimination of such duty provided in such bill does not take effect prior to January 1, 1995, and

''(C) the consultations required under section 3(c)(1) of such Act occur at least ninety days prior to the date on which such bill is submitted to the Congress under section 3(c) of such Act.

''(d) PRIVATE REMEDIES NOT CREATED.—Neither the entry into force of the Agreement with respect to the United States, nor the enactment of this Act, shall be construed as creating any private right of action or remedy for which provision is not explicitly made under this Act or under the laws of the United States.

''SEC. 6. TERMINATION.

''The provisions of section 125(a) of the Trade Act of 1974 (19 U.S.C. 2135(a)) shall not apply to the Agreement.

''SEC. 7. LOWERED THRESHOLD FOR GOVERNMENT PROCUREMENT UNDER TRADE AGREEMENTS ACT OF 1979 IN THE CASE OF CERTAIN ISRAELI PRODUCTS.

[Section amended section 2518(4)(C) of this title.]

''SEC. 8. TECHNICAL AMENDMENTS.

[Section amended title IV of Pub. L. 98–573, set out as a note below, this section, and sections 2462 to 2464 of this title.]

''SEC. 9. ADDITIONAL PROCLAMATION AUTHORITY.

''(a) ELIMINATION OR MODIFICATIONS OF DUTIES.—The President is authorized to proclaim elimination or modification of any existing duty as the President determines is necessary to exempt any article from duty if—

''(1) that article is wholly the growth, product, or manufacture of the West Bank, the Gaza Strip, or a qualifying industrial zone or is a new or different article of commerce that has been grown, produced, or manufactured in the West Bank, the Gaza Strip, or a qualifying industrial zone;

''(2) that article is imported directly from the West Bank, the Gaza Strip, Israel, or a qualifying industrial zone; and

''(3) the sum of—

''(A) the cost or value of the materials produced in the West Bank, the Gaza Strip, Israel, or a qualifying industrial zone, plus

''(B) the direct costs of processing operations performed in the West Bank, the Gaza Strip, Israel, or a qualifying industrial zone,

is not less than 35 percent of the appraised value of the product at the time it is entered into the United States.

For purposes of determining the 35 percent content requirement contained in paragraph (3), the cost or value of materials which are used in the production of an article in the West Bank, the Gaza Strip, or a qualifying industrial zone, and are the products of the United States, may be counted in an amount up to 15 percent of the appraised value of the article.

''(b) APPLICABILITY OF CERTAIN PROVISIONS OF THE AGREEMENT.—

''(1) NONQUALIFYING OPERATIONS.—No article shall be considered a new or different article of commerce under this section, and no material shall be included for purposes of determining the 35 percent requirement of subsection (a)(3), by virtue of having merely undergone—

''(A) simple combining or packaging operations, or

''(B) mere dilution with water or with another substance that does not materially alter the characteristics of the article or material.

''(2) REQUIREMENTS FOR NEW OR DIFFERENT ARTICLE OF COMMERCE.—For purposes of subsection (a)(1), an article is a 'new or different article of commerce' if it is substantially transformed into an article having a new name, character, or use.

''(3) COST OR VALUE OF MATERIALS.—(A) For purposes of this section, the cost or value of materials produced in the West Bank, the Gaza Strip, or a qualifying industrial zone includes—

''(i) the manufacturer's actual cost for the materials;

''(ii) when not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

''(iii) the actual cost of waste or spoilage, less the value of recoverable scrap; and

''(iv) taxes or duties imposed on the materials by the West Bank, the Gaza Strip, or a qualifying industrial zone, if such taxes or duties are not remitted on exportation.

''(B) If a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of—

''(i) all expenses incurred in the growth, production, or manufacture of the material, including general expenses;

''(ii) an amount for profit; and

''(iii) freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

If the information necessary to compute the cost or value of a material is not available, the Customs Service may ascertain or estimate the value thereof using all reasonable methods.

''(4) DIRECT COSTS OF PROCESSING OPERATIONS.—(A) For purposes of this section, the 'direct costs of processing operations performed in the West Bank, Gaza Strip, or a qualifying industrial zone' with respect to an article are those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly, of that article. Such costs include, but are not limited to, the following to the extent that they are includible in the appraised value of articles imported into the United States:

''(i) All actual labor costs involved in the growth, production, manufacture, or assembly of the article, including fringe benefits, on-the-job training, and costs of engineering, supervisory, quality control, and similar personnel.

''(ii) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the article.

''(iii) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the article.

''(iv) Costs of inspecting and testing the article.

''(B) Those items that are not included as direct costs of processing operations with respect to an article are those which are not directly attributable to the article or are not costs of manufacturing the article. Such items include, but are not limited to—

''(i) profit; and

''(ii) general expenses of doing business which are either not allocable to the article or are not related

to the growth, production, manufacture, or assembly of the article, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

''(5) IMPORTED DIRECTLY.—For purposes of this section—

''(A) articles are 'imported directly' if—

''(i) the articles are shipped directly from the West Bank, the Gaza Strip, a qualifying industrial zone, or Israel into the United States without passing through the territory of any intermediate country; or

''(ii) if shipment is through the territory of an intermediate country, the articles in the shipment do not enter into the commerce of any intermediate country and the invoices, bills of lading, and other shipping documents specify the United States as the final destination; or

''(B) if articles are shipped through an intermediate country and the invoices and other documents do not specify the United States as the final destination, then the articles in the shipment, upon arrival in the United States, are imported directly only if they—

''(i) remain under the control of the customs authority in an intermediate country;

''(ii) do not enter into the commerce of an intermediate country except for the purpose of a sale other than at retail, but only if the articles are imported as a result of the original commercial transactions between the importer and the producer or the producer's sales agent; and

''(iii) have not been subjected to operations other than loading, unloading, or other activities necessary to preserve the article in good condition.

''(6) DOCUMENTATION REQUIRED.—An article is eligible for the duty exemption under this section only if—

''(A) the importer certifies that the article meets the conditions for the duty exemption; and

''(B) when requested by the Customs Service, the importer, manufacturer, or exporter submits a declaration setting forth all pertinent information with respect to the article, including the following:

''(i) A description of the article, quantity, numbers, and marks of packages, invoice numbers, and bills of lading.

''(ii) A description of the operations performed in the production of the article in the West Bank, the Gaza Strip, a qualifying industrial zone, or Israel and identification of the direct costs of processing operations.

''(iii) A description of any materials used in production of the article which are wholly the growth, product, or manufacture of the West Bank, the Gaza Strip, a qualifying industrial zone, Israel or United States, and a statement as to the cost or value of such materials.

''(iv) A description of the operations performed on, and a statement as to the origin and cost or value of, any foreign materials used in the article which are claimed to have been sufficiently processed in the West Bank, the Gaza Strip, a qualifying industrial zone, or Israel so as to be materials produced in the West Bank, the Gaza Strip, a qualifying industrial zone, or Israel.

''(v) A description of the origin and cost or value of any foreign materials used in the article which have not been substantially transformed in the West Bank, the Gaza Strip, or a qualifying industrial zone.

''(c) SHIPMENT OF ARTICLES OF ISRAEL THROUGH WEST BANK OR GAZA STRIP.—The President is authorized to proclaim that articles of Israel may be treated as though they were articles directly shipped from Israel for the purposes of the Agreement even if shipped to the United States from the West Bank, the Gaza Strip, or a qualifying industrial zone, if the articles otherwise meet the requirements of the Agreement.

''(d) TREATMENT OF COST OR VALUE OF MATERIALS.—The President is authorized to proclaim that the cost or value of materials produced in the West Bank, the Gaza Strip, or a qualifying industrial zone may be included in the cost or value of materials produced in Israel under section 1(c)(i) of Annex 3 of the Agreement, and the direct costs of processing operations performed in the West Bank, the Gaza Strip, or a qualifying industrial zone may be included in the direct costs of processing operations performed in Israel under section 1(c)(ii) of Annex 3 of the Agreement.

''(e) QUALIFYING INDUSTRIAL ZONE DEFINED.—For purposes of this section, a 'qualifying industrial zone' means any area that—

''(1) encompasses portions of the territory of Israel and Jordan or Israel and Egypt;

''(2) has been designated by local authorities as an enclave where merchandise may enter without payment of duty or excise taxes; and

''(3) has been specified by the President as a qualifying industrial zone.''

[For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

TRADE AGREEMENTS WITH ISRAEL

Pub. L. 98–573, title IV, §§ 402–405, formerly §§ 402–404, 406, Oct. 30, 1984, 98 Stat. 3015–3017, as renumbered and amended by Pub. L. 99–47, § 8(a), June 11, 1985, 99 Stat. 84; Pub. L. 99–514, title XVIII, § 1889(6), Oct. 22, 1986, 100 Stat. 2926; Pub. L. 100–418, title I, §§ 1214(s)(4), 1401(b)(3), Aug. 23, 1988, 102 Stat. 1160, 1240, provided that:

''SEC. 402. CRITERIA FOR DUTY-FREE TREATMENT OF ARTICLES.

''(a)(1) The reduction or elimination of any duty imposed on any article by the United States provided for in a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)] shall apply only if—

''(A) that article is the growth, product, or manufacture of Israel or is a new or different article of commerce that has been grown, produced, or manufactured in Israel;

''(B) that article is imported directly from Israel into the customs territory of the United States; and

''(C) the sum of—

''(i) the cost of value of the materials produced in Israel, plus

''(ii) the direct costs of processing operations performed in Israel,

is not less than 35 percent of the appraised value of such article at the time it is entered.

If the cost or value of materials produced in the customs territory of the United States is included with respect to an article to which this subsection applies, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (C).

''(2) No article may be considered to meet the requirements of paragraph (1)(A) by virtue of having merely undergone—

''(A) simple combining or packaging operations; or

''(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

''(b) As used in this section, the phrase 'direct costs of processing operations' includes, but is not limited to—

''(1) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific

merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and

''(2) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

Such phrase does not include costs which are not directly attributable to the merchandise concerned, or are not costs of manufacturing the product, such as (A) profit, and (B) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions or expenses.

''(c) REGULATIONS.—The Secretary of the Treasury, after consultation with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out this section.

''SEC. 403. APPLICATION OF CERTAIN OTHER TRADE LAW PROVISIONS.

''(a) SUSPENSION OF DUTY-FREE TREATMENT.—The President may by proclamation suspend the reduction or elimination of any duty provided under any trade agreement provision entered into with Israel under the authority of section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)] with respect to any article and may proclaim a duty rate for such article if such action is proclaimed under section 203 of the Trade Act of 1974 [19 U.S.C. 2253] or section 232 of the Trade Expansion Act of 1962 [19 U.S.C. 1862].

''(b) ITC REPORTS.—In any report by the United States International Trade Commission (hereinafter referred to in this title [this note] as the 'Commission') to the President under section 202(f) of the Trade Act of 1974 [19 U.S.C. 2252(f)] regarding any article for which a reduction or elimination of any duty is provided under a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)], the Commission shall state whether and to what extent its findings and recommendations apply to such an article when imported from Israel.

''(c) For purposes of section 203 of the Trade Act of 1974 [19 U.S.C. 2253], the suspension of the reduction or elimination of a duty under subsection (a) shall be treated as an increase in duty.

''(d) No proclamation which provides solely for a suspension referred to in subsection (a) with respect to any article shall be made under section 203 of the Trade Act of 1974 [19 U.S.C. 2253], unless the Commission, in addition to making an affirmative determination with respect to such article under section 202(b) of the Trade Act of 1974 [19 U.S.C. 2252(b)], determines in the course of its investigation under that section that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the reduction or elimination of any duty provided under any trade agreement provision entered into with Israel under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)].

''(e)(1) Any proclamation issued under section 203 of the Trade Act of 1974 [19 U.S.C. 2253] that is in effect when an agreement with Israel is entered into under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)] shall remain in effect until modified or terminated.

''(2) If any article is subject to import relief at the time an agreement is entered into with Israel under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)], the President may reduce or terminate the application of such import relief to the importation of such article before the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of sections 203 and 204 of the Trade Act of 1974 [19 U.S.C. 2253, 2254].

''SEC. 404. FAST TRACK PROCEDURES FOR PERISHABLE ARTICLES.

''(a) If a petition is filed with the Commission under the provisions of section 202(a) of the Trade Act of 1974 [19 U.S.C. 2252(a)] regarding a perishable product which is subject to any reduction or elimination of a duty imposed by the United States under a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)] and alleges injury from imports of that product, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted under subsection (c) with respect to such article.

''(b) Within 14 days after the filing of a petition under subsection (a)—

''(1) if the Secretary of Agriculture has reason to believe that a perishable product from Israel is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the President and recommend that the President take emergency action; or

''(2) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

''(c) Within 7 days after the President receives a recommendation from the Secretary of Agriculture to take emergency action under subsection (b), he shall issue a proclamation withdrawing the reduction or elimination of duty provided to the perishable product under any trade agreement provision entered into under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)] or publish a notice of his determination not to take emergency action.

''(d) The emergency action provided under subsection (c) shall cease to apply—

''(1) upon the taking of actions under section 203 of the Trade Act of 1974 [19 U.S.C. 2253];

''(2) on the day a determination of the President under section 203 of such Act [19 U.S.C. 2253] not to take action becomes final;

''(3) in the event of a report of the Commission containing a negative finding, on the day the Commission's report is submitted to the President; or

''(4) whenever the President determines that because of changed circumstances such relief is no longer warranted.

''(e) For purposes of this section, the term 'perishable product' means any—

''(1) live plants and fresh cut flowers provided for in chapter 6 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202, hereinafter referred to as the 'HTS');

''(2) vegetables, edible nuts or fruit provided for in chapters 7 and 8, heading 1105, subheadings 1106.10.00 and 1106.30, heading 1202, subheadings 1214.90.00 and 1704.90.60, headings 2001 through 2008 (excluding subheadings 2001.90.20 and 2004.90.10) and subheading 2103.20.40 of the HTS;

''(3) concentrated citrus fruit juice provided for in subheadings 2009.11.00, 2009.19.40, 2009.20.40, 2009.30.20, and 2009.30.60 of the HTS.

''(f) No trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)] shall affect fees imposed under section 22 of the Agricultural Adjustment Act (7 U.S.C. 624).

''SEC. 405. CONSTRUCTION OF TITLE.

''Neither the taking effect of any trade agreement provision entered into with Israel under section 102(b)(1) [19 U.S.C. 2112(b)(1)], nor any proclamation issued to implement any such provision, may affect in any manner, or to any extent, the application to any Israeli articles of section 232 of the Trade Expansion Act of 1962 [19 U.S.C. 1862], section 337 of title VII [probably should be ''title III'' of the Tariff Act of 1930 [19 U.S.C. 1337], chapter 1 of title II and chapter 1 of title III of the Trade Act of 1974 [19 U.S.C. 2251 et seq., 2411 et seq.], or any other provision of law under which relief from injury caused by import competition or by unfair import trade practices may be sought.''

[Amendment of section 404 of Pub. L. 98–573 by section 1214(s)(4) of Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.]

[Amendment of sections 403 and 404 of Pub. L. 98–573 by section 1401 of Pub. L. 100–418 effective Aug. 23, 1988, and applicable with respect to investigations initiated under part 1 (§ 2251 et seq.) of subchapter II of this chapter on or after that date, see section 1401(c) of Pub. L. 100–418, set out as an Effective Date of 1988 Amendment note under section 2251 of this title.]

[The Harmonized Tariff Schedule of the United States is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.]

PRESIDENTIAL DETERMINATION REGARDING MULTILATERAL TRADE NEGOTIATIONS

For provisions relating to Presidential determination regarding multilateral trade negotiations and Presidential determination regarding acceptance and application of certain international trade agreements, see notes set out under section 2503 of this title.

EX. ORD. NO. 12662. IMPLEMENTING UNITED STATES-CANADA FREE-TRADE IMPLEMENTATION ACT

Ex. Ord. No. 12662, Dec. 31, 1988, 54 F.R. 785, as amended by Ex. Ord. No. 12889, § 4(c), Dec. 27, 1993, 58 F.R. 69681, provided:

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including the United States-Canada Free-Trade Agreement Implementation Act of 1988 (Public Law 100–449, 102 Stat. 1851) (''FTA Implementation Act'') [set out as a note above], it is hereby ordered as follows:

SECTION 1. [Superseded by Ex. Ord. No. 12889, § 4(c), Dec. 27, 1993, 58 F.R. 69681, see 19 U.S.C. 3311 note.]

SEC. 2. *Establishment of United States Secretariat*. Pursuant to subsection 405(e) of the FTA Implementation Act, a ''United States Secretariat'' shall be established within the International Trade Administration of the Department of Commerce. The Secretariat shall facilitate:

(1) the operation of Chapters 18 and 19 of the Free-Trade Agreement, and

(2) the work of the binational panels and extraordinary challenge committees convened under those Chapters.

SEC. 3. *Acceptance by the President of Panel and Committee Decisions*. In accordance with subsection 401(c) of the FTA Implementation Act, in the event that the provisions of subparagraph 516A(g)(7)(B) of the Tariff Act of 1930, as amended, 19 U.S.C. section 1516a(g)(7)(B), take effect, I accept, as a whole, all decisions of binational panels and extraordinary challenge committees.

SEC. 4. *Judicial Review*. This Order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

SEC. 5. *Effective Date*. This Order shall take effect upon the entry into force of the Free-Trade Agreement.

EX. ORD. NO. 13141. ENVIRONMENTAL REVIEW OF TRADE AGREEMENTS

Ex. Ord. No. 13141, Nov. 16, 1999, 64 F.R. 63169, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to further the environmental and trade policy goals of the United States, it is hereby ordered as follows:

SECTION 1. *Policy*. The United States is committed to a policy of careful assessment and consideration of the environmental impacts of trade agreements. The United States will factor environmental considerations into the development of its trade negotiating objectives. Responsible agencies will accomplish these goals through a process of ongoing assessment and evaluation, and, in certain instances, written environmental reviews.

SEC. 2. *Purpose and Need*. Trade agreements should contribute to the broader goal of sustainable development. Environmental reviews are an important tool to help identify potential environmental effects of trade agreements, both positive and negative, and to help facilitate consideration of appropriate responses to those effects whether in the course of negotiations, through other means, or both.

SEC. 3. (a) *Implementation*. The United States Trade Representative (Trade Representative) and the Chair of the Council on Environmental Quality shall oversee the implementation of this order, including the development of procedures pursuant to this order, in consultation with appropriate foreign policy, environmental, and economic agencies.

(b) *Conduct of Environmental Reviews*. The Trade Representative, through the interagency Trade Policy Staff Committee (TPSC), shall conduct the environmental reviews of the agreements under section 4 of this order.

SEC. 4. *Trade Agreements*.

(a) Certain agreements that the United States may negotiate shall require an environmental review. These include:

(i) comprehensive multilateral trade rounds;

(ii) bilateral or plurilateral free trade agreements; and

(iii) major new trade liberalization agreements in natural resource sectors.

(b) Agreements reached in connection with enforcement and dispute resolution actions are not covered by this order.

(c) For trade agreements not covered under subsections 4(a) and (b), environmental reviews will generally not be required. Most sectoral liberalization agreements will not require an environmental review. The Trade Representative, through the TPSC, shall determine whether an environmental review of an agreement or category of agreements is warranted based on such factors as the significance of reasonably foreseeable environmental impacts.

SEC. 5. *Environmental Reviews*.

(a) Environmental reviews shall be:

(i) written;

(ii) initiated through a Federal Register notice, outlining the proposed agreement and soliciting public comment and information on the scope of the environmental review of the agreement;

(iii) undertaken sufficiently early in the process to inform the development of negotiating positions, but shall not be a condition for the timely tabling of particular negotiating proposals;

(iv) made available in draft form for public comment, where practicable; and

(v) made available to the public in final form.

(b) As a general matter, the focus of environmental reviews will be impacts in the United States. As appropriate and prudent, reviews may also examine global and transboundary impacts.

SEC. 6. *Resources*. Upon request by the Trade Representative, with the concurrence of the Deputy Director for Management of the Office of Management and Budget, Federal agencies shall, to the extent permitted by law and subject to the availability of appropriations, provide analytical and financial resources and support, including the detail of appropriate personnel, to the Office of the United States Trade Representative to carry out the provisions of this order.

SEC. 7. *General Provisions*. This order is intended only to improve the internal management of the executive branch and does not create any right, benefit, trust, or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON.

DELEGATION OF AUTHORITY UNDER SECTION 103(a) OF UNITED STATES-CANADA FREE-TRADE AGREEMENT IMPLEMENTATION ACT OF 1988

Memorandum of President of the United States, Feb. 11, 1991, 56 F.R. 6789, provided:

Memorandum for the United States Trade Representative

By virtue of the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3 of the United States Code, you are hereby delegated the authority to perform the functions necessary to fulfill the consultation and lay-over requirements set forth in section 103(a)(1) through (4) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (''the Act'') [Pub. L. 100–449, set out as a note above], including:

(1) obtaining advice from the appropriate advisory committees and the U.S. International Trade Commission on the proposed implementation of an action by Presidential proclamation;

(2) submitting a report on such action to the House Ways and Means and Senate Finance Committees; and

(3) consulting with such committees during the 60-day period following the date on which the requirements under (1) and (2) have been met.

The President retains the sole authority under the Act to implement an action by proclamation after the consultation and lay-over requirements set forth in section 103(a)(1) through (4) have been met.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE BUSH.

§ 2113. Overall negotiating objective

The overall United States negotiating objective under sections 2111 and 2112 of this title shall be to obtain more open and equitable market access and the harmonization, reduction, or elimination of devices which distort trade or commerce. To the maximum extent feasible, the harmonization, reduction, or elimination of agricultural trade barriers and distortions shall be undertaken in conjunction with the harmonization, reduction, or elimination of industrial trade barriers and distortions.

(Pub. L. 93–618, title I, § 103, Jan. 3, 1975, 88 Stat. 1984.)

§ 2114. Sector negotiating objectives

(a) Obtaining equivalent competitive opportunities

A principal United States negotiating objective under sections 2111 and 2112 of this title shall be to obtain, to the maximum extent feasible, with respect to appropriate product sectors of manufacturing, and with respect to the agricultural sector, competitive opportunities for United States exports to the developed countries of the world equivalent to the competitive opportunities afforded in United States markets to the importation of like or similar products, taking into account all barriers (including tariffs) to and other distortions of international trade affecting that sector.

(b) Conduct of negotiations on basis of appropriate product sectors of manufacturing

As a means of achieving the negotiating objective set forth in subsection (a) of this section, to the extent consistent with the objective of maximizing overall economic benefit to the United States (through maintaining and enlarging foreign markets for products of United States agriculture, industry, mining, and commerce, through the development of fair and equitable market opportunities, and through open and nondiscriminatory world trade), negotiations shall, to the extent feasible be conducted on the basis of appropriate product sectors of manufacturing.

(c) Identification of appropriate product sectors of manufacturing

For the purposes of this section and section 2155 of this title, the United States Trade Representative together with the Secretary of Commerce, Agriculture, or Labor, as appropriate, shall, after consultation with the Advisory Committee for Trade Negotiations established under section 2155 of this title and after consultation with interested private or non-Federal governmental organizations, identify appropriate product sectors of manufacturing.

(d) Presidential analysis of how negotiating objectives are achieved in each product sector by trade agreements

If the President determines that competitive opportunities in one or more product sectors will be significantly affected by a trade agreement concluded under section 2111 or 2112 of this title, he shall submit to the Congress with each such agreement an analysis of the extent to which the negotiating objective set forth in subsection (a) of this section is achieved by such agreement in each product sector or product sectors.

(Pub. L. 93–618, title I, § 104, Jan. 3, 1975, 88 Stat. 1984; 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381; Pub. L. 98–573, title III, § 306(c)(2)(C)(i), Oct. 30, 1984, 98 Stat. 3012.)

CHANGE OF NAME

''United States Trade Representative'' substituted for ''Special Representative for Trade Negotiations'' in subsec. (c), pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1–107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title. See, also, section 2171 of this title as amended by Pub. L. 97–456.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–573 inserted ''or non-Federal governmental'' after ''private''.

§ 2114a. Negotiating objectives with respect to trade in services, foreign direct investment, and high technology products

(a) Trade in services

(1) In general

Principal United States negotiating objectives under section 2112 of this title shall be—

(A) to reduce or to eliminate barriers to, or other distortions of, international trade in services (particularly United States service sector trade in foreign markets), including barriers that deny national treatment and restrictions on the establishment and operation in such markets; and

(B) to develop internationally agreed rules, including dispute settlement procedures, which—

(i) are consistent with the commercial policies of the United States, and

(ii) will reduce or eliminate such barriers or distortions and help ensure open international trade in services.

(2) Domestic objectives

In pursuing the objectives described in paragraph (1), United States negotiators shall take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the laws and regulations related thereto.

(b) Foreign direct investment

(1) In general

Principal United States negotiating objectives under section 2112 of this title shall be—

(A) to reduce or to eliminate artificial or trade-distorting barriers to foreign direct investment, to expand the principle of national treatment, and to reduce unreasonable barriers to establishment; and

(B) to develop internationally agreed rules, including dispute settlement procedures, which—

(i) will help ensure a free flow of foreign direct investment, and

(ii) will reduce or eliminate the trade distortive effects of certain investment related measures.

(2) Domestic objectives

In pursuing the objectives described in paragraph (1), United States negotiators shall take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the laws and regulations related thereto.

(c) High technology products

Principal United States negotiating objectives shall be—

(1) to obtain and preserve the maximum openness with respect to international trade and investment in high technology products and related services;

(2) to obtain the elimination or reduction of, or compensation for, the significantly distorting effects of foreign government acts, policies, or practices identified in section 2241 of this title, with particular consideration given to the nature and extent of foreign government intervention affecting United States exports of high technology products or investments in high technology industries, including—

(A) foreign industrial policies which distort international trade or investment;

(B) measures which deny national treatment or otherwise discriminate in favor of domestic high technology industries;

(C) measures which fail to provide adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property (including trademarks, patents, and copyrights);

(D) measures which impair access to domestic markets for key commodity products; and

(E) measures which facilitate or encourage anticompetitive market practices or structures;

(3) to obtain commitments that official policy of foreign countries or instrumentalities will not discourage government or private procurement of foreign high technology products and related services;

(4) to obtain the reduction or elimination of all tariffs on, and other barriers to, United States exports of high technology products and related services;

(5) to obtain commitments to foster national treatment;

(6) to obtain commitments to—

(A) foster the pursuit of joint scientific cooperation between companies, institutions or governmental entities of the United States and those of the trading partners of the United States in areas of mutual interest through such measures as financial participation and technical and personnel exchanges, and

(B) ensure that access by all participants to the results of any such cooperative efforts should not be impaired; and

(7) to provide effective minimum safeguards for the acquisition and enforcement of intellectual property rights and the property value of proprietary data.

(d) Definition of barriers and other distortions

For purposes of subsection (a) of this section, the term ''barriers to, or other distortions of, international trade in services'' includes, but is not limited to—

(1) barriers to establishment in foreign markets, and

(2) restrictions on the operation of enterprises in foreign markets, including—

(A) direct or indirect restrictions on the transfer of information into, or out of, the country or instrumentality concerned, and

(B) restrictions on the use of data processing facilities within or outside of such country or instrumentality.

(Pub. L. 93–618, title I, § 104A, as added Pub. L. 98–573, title III, § 305(a)(1), Oct. 30, 1984, 98 Stat. 3006.)

§ 2114b. Provisions relating to international trade in services

(1) The Secretary of Commerce shall establish a service industries development program designed to—

(A) develop, in consultation with other Federal agencies as appropriate, policies regarding services that are designed to increase the competitiveness of United States service industries in foreign commerce;

(B) develop a data base for assessing the adequacy of Government policies and actions pertaining to services, including, but not limited to, data on trade, both aggregate and pertaining to individual service industries;

(C) collect and analyze, in consultation with appropriate agencies, information pertaining to the international operations and competitiveness of United States service industries, including information with respect to—

(i) policies of foreign governments toward foreign and United States service industries;

(ii) Federal, State, and local regulation of both foreign and United States suppliers of services, and the effect of such regulation on trade;

(iii) the adequacy of current United States policies to strengthen the competitiveness of United States service industries in foreign commerce, including export promotion activities in the service sector;

(iv) tax treatment of services, with particular emphasis on the effect of United States taxation on the international competitiveness of United States firms and exports;

(v) treatment of services under international agreements of the United States;

(vi) antitrust policies as such policies affect the competitiveness of United States firms; and

(vii) treatment of services in international agreements of the United States;

(D) conduct a program of research and analysis of service-related issues and problems, including forecasts and industrial strategies; and

(E) conduct sectoral studies of domestic service industries.

(2) For purposes of the collection and analysis required by paragraph (1), and for the purpose of any reporting the Department of Commerce makes under paragraph (3), such collection and reporting shall distinguish between income from investment and income from noninvestment services.

(3) On not less than a biennial basis beginning in 1986, the Secretary shall prepare a report which analyzes the information collected under paragraph (1). Such report shall be submitted to the Congress and to the President by not later than the date that is 120 days after the close of the period covered by the report.

(4) The Secretary of Commerce shall carry out the provisions of this subsection from funds otherwise made available to him which may be used for such purposes.

(5) For purposes of this section, the term ''services'' means economic activities whose outputs are other than tangible goods. Such term includes, but is not limited to, banking, insurance, transportation, postal and delivery services, communications and data processing, retail and wholesale trade, advertising, accounting, construction, design and engineering, management consulting, real estate, professional services, entertainment, education, health care, and tourism.

(Pub. L. 98–573, title III, §306(a), Oct. 30, 1984, 98 Stat. 3008; Pub. L. 105–277, div. A, §101(h) [title VI, §633(c)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–524.)

CODIFICATION

Section was enacted as part of the International Trade and Investment Act, and also as part of the Trade and Tariff Act of 1984, and not as part of the Trade Act of 1974 which comprises this chapter.

Section is comprised of subsec. (a) of section 306 of Pub. L. 98–573. Subsec. (b) of such section amended sections 3101, 3103, and 3104 of Title 22, Foreign Relations and Intercourse, and enacted a provision set out as a note under section 3101 of Title 22, subsec. (c)(1), (2)(A) of such section is classified to section 2114c of this title, and subsec. (c)(2)(B), (C) of such section amended sections 2114, 2155, 2413, and 2414 of this title.

AMENDMENTS

1998—Par. (5). Pub. L. 105–277, which directed the amendment of par. (5) by inserting ''postal and delivery services,'' after ''transportation.'' in second sentence, was executed by making the insertion after ''transportation,'' to reflect the probable intent of Congress.

§ 2114c. Trade in services: development, coordination, and implementation of Federal policies; staff support and other assistance; specific service sector authorities unaffected; executive functions

(1)(A) The United States Trade Representative, through the interagency trade organization established pursuant to section 1872(a) of this title or any subcommittee thereof, shall, in conformance with this Act and other provisions of law, develop (and coordinate the implementation of) United States policies concerning trade in services.

(B) In order to encourage effective development, coordination, and implementation of United States policies on trade in services—

(i) each department or agency of the United States responsible for the regulation of any service sector industry shall, as appropriate, advise and work with the United States Trade Representative concerning matters that have come to the department's or agency's attention with respect to—

(I) the treatment afforded United States service sector interest in foreign markets; or

(II) allegations of unfair practices by foreign governments or companies in a service sector; and

(ii) the Department of Commerce, together with other appropriate agencies as requested by the United States Trade Representative, shall provide staff support and other assistance for negotiations on service-related issues by the United States Trade Representatives[1] and the domestic implementation of service-related agreements.

(C) Nothing in this paragraph shall be construed to alter any existing authority or responsibility with respect to any specific service sector.

(2)(A)[2] The President shall, as he deems appropriate—

(i) consult with State governments on issues of trade policy, including negotiating objectives and implementation of trade agreements, affecting the regulatory authority of non-Federal governments, or their procurement of goods and services;

(ii) establish one or more intergovernmental policy advisory committees on trade which shall serve as a principal forum in which State and local governments may consult with the Federal Government with respect to the matters described in clause (i); and

[1] So in original. Probably should be ''Representative''.

[2] See Codification note below.

(iii) provide to State and local governments and to United States service industries, upon their request, advice, assistance, and (except as may be otherwise prohibited by law) data, analyses, and information concerning United States policies on international trade in services.

(Pub. L. 98–573, title III, § 306(c)(1), (2)(A), Oct. 30, 1984, 98 Stat. 3010, 3011.)

REFERENCES IN TEXT

This Act, referred to in par. (1)(A), is Pub. L. 98–573, Oct. 30, 1984, 98 Stat. 2984, known as the Trade and Tariff Act of 1984. For classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 1654 of this title and Tables.

CODIFICATION

Section was enacted as part of the International Trade and Investment Act, and also as part of the Trade and Tariff Act of 1984, and not as part of the Trade Act of 1974 which comprises this chapter.

Section is comprised of subsec. (c)(1), (2)(A) of section 306 of Pub. L. 98–573. Subsec. (a) of such section is classified to section 2114(b) of this title, subsec. (b) of such section amended sections 3101, 3103, and 3104 of Title 22, Foreign Relations and Intercourse, and enacted a provision set out as a note under section 3101 of Title 22, and subsec. (c)(2)(B), (C) of such section amended sections 2114, 2155, 2413, and 2414 of this title.

§ 2114d. Foreign export requirements; consultations and negotiations for reduction and elimination; restrictions on and exclusion from entry of products or services; savings provision; compensation authority applicable

(1) If the United States Trade Representative, with the advice of the committee established by section 1872 of this title, determines that action by the United States is appropriate to respond to any export performance requirements of any foreign country or instrumentality that adversely affect the economic interests of the United States, then the United States Trade Representative shall seek to obtain the reduction and elimination of such export performance requirements through consultations and negotiations with the foreign country or instrumentality concerned.

(2) In addition to the action referred to in subsection (1), the United States Trade Representative may impose duties or other import restrictions on the products or services of such foreign country or instrumentality for such time as he determines appropriate, including the exclusion from entry into the United States of products subject to such requirements.

(3) Nothing in paragraph (2) shall apply to any products or services with respect to which—

(A) any foreign direct investment (including a purchase of land or facilities) has been made directly or indirectly by any United States person before October 30, 1984, or

(B) any written commitment relating to a foreign direct investment that is binding on October 30, 1984, has been made directly or indirectly by any United States person.

(4) Whenever the international obligations of the United States and actions taken under paragraph (2) make compensation necessary or appropriate, compensation may be provided by the United States Trade Representative subject to the limitations and conditions contained in section 2133 of this title for providing compensation for actions taken under section 2253 of this title.

(Pub. L. 98–573, title III, § 307(b), Oct. 30, 1984, 98 Stat. 3012; Pub. L. 99–514, title XVIII, § 1889(5), Oct. 22, 1986, 100 Stat. 2926.)

CODIFICATION

Section was enacted as part of the International Trade and Investment Act, and also as part of the Trade and Tariff Act of 1984, and not as part of the Trade Act of 1974 which comprises this chapter.

Section is comprised of subsec. (b) of section 307 of Pub. L. 98–573. Subsec. (a) of such section amended section 2112(g)(3) of this title.

AMENDMENTS

1986—Par. (3). Pub. L. 99–514 struck out ''or paragraph (3)'' after ''paragraph (2)''.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1801–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 2114e. Negotiation of agreements concerning high technology industries

The President may enter into such bilateral or multilateral agreements as may be necessary or appropriate to achieve the objectives of this section and the negotiating objectives under section 2114a(c) of this title.

(Pub. L. 98–573, title III, § 308(a), Oct. 30, 1984, 98 Stat. 3013.)

REFERENCES IN TEXT

This section, referred to in text, means section 308 of Pub. L. 98–573. See Codification note below.

CODIFICATION

Section was enacted as part of the International Trade and Investment Act, and also as part of the Trade and Tariff Act of 1984, and not as part of the Trade Act of 1974 which comprises this chapter.

Section is comprised of subsec. (a) of section 308 of Pub. L. 98–573. Subsec. (b) of such section 308 enacted section 2138 of this title.

§ 2115. Bilateral trade agreements

If the President determines that bilateral trade agreements will more effectively promote the economic growth of, and full employment in, the United States, then, in such cases, a negotiating objective under sections 2111 and 2112 of this title shall be to enter into bilateral trade agreements. Each such trade agreement shall provide for mutually advantageous economic benefits.

(Pub. L. 93–618, title I, § 105, Jan. 3, 1975, 88 Stat. 1984.)

§ 2116. Agreements with developing countries

A United States negotiating objective under sections 2111 and 2112 of this title shall be to enter into trade agreements which promote the

economic growth of both developing countries and the United States and the mutual expansion of market opportunities.

(Pub. L. 93–618, title I, §106, Jan. 3, 1975, 88 Stat. 1985.)

§ 2117. International safeguard procedures

(a) Harmonization, reduction, or elimination of barriers and distortions affecting international trade; use of temporary measures

A principal United States negotiating objective under section 2112 of this title shall be to obtain internationally agreed upon rules and procedures, in the context of the harmonization, reduction, or elimination of barriers to, and other distortions of, international trade, which permit the use of temporary measures to ease adjustment to changes occurring in competitive conditions in the domestic markets of the parties to an agreement resulting from such negotiations due to the expansion of international trade.

(b) Permissible provisions

Any agreement entered into under section 2112 of this title may include provisions establishing procedures for—

(1) notification of affected exporting countries,

(2) international consultations,

(3) international review of changes in trade flows,

(4) making adjustments in trade flows as the result of such changes, and

(5) international mediation.

Such agreements may also include provisions which—

(A) exclude, under specified conditions, the parties thereto from compensation obligations and retaliation, and

(B) permit domestic public procedures through which interested parties have the right to participate.

(Pub. L. 93–618, title I, §107, Jan. 3, 1975, 88 Stat. 1985.)

§ 2118. Access to supplies

(a) Fair and equitable access

A principal United States negotiating objective under section 2112 of this title shall be to enter into trade agreements with foreign countries and instrumentalities to assure the United States of fair and equitable access at reasonable prices to supplies of articles of commerce which are important to the economic requirements of the United States and for which the United States does not have, or cannot easily develop, the necessary domestic productive capacity to supply its own requirements.

(b) Continued availability; reciprocal concessions; comparable trade obligations

Any agreement entered into under section 2112 of this title may include provisions which—

(1) assure to the United States the continued availability of important articles at reasonable prices, and

(2) provide reciprocal concessions or comparable trade obligations, or both, by the United States.

(Pub. L. 93–618, title I, §108, Jan. 3, 1975, 88 Stat. 1985.)

§ 2119. Staging requirements and rounding authority

(a) Maximum aggregate reductions in rates of duty

Except as otherwise provided in this section, the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant to a trade agreement under section 2111 of this title shall not exceed the aggregate reduction which would have been in effect on such day if—

(1) a reduction of 3 percent ad valorem or a reduction of one-tenth of the total reduction, whichever is greater, had taken effect on the effective date of the first reduction proclaimed pursuant to section 2111(a)(2) of this title to carry out such agreement with respect to such article, and

(2) a reduction equal to the amount applicable under paragraph (1) had taken effect at 1-year intervals after the effective date of such first reduction.

This subsection shall not apply in any case where the total reduction in the rate of duty does not exceed 10 percent of the rate before the reduction.

(b) Simplification of computation

If the President determines that such action will simplify the computation of the amount of duty imposed with respect to an article, he may exceed the limitation provided by section 2111(b) of this title or subsection (a) of this section by not more than whichever of the following is lesser:

(1) the difference between the limitation and the next lower whole number, or

(2) one-half of 1 percent ad valorem.

(c) Ten-year period for commencement of reductions in rates of duty

(1) No reduction in the rate of duty on any article pursuant to a trade agreement under section 2111 of this title shall take effect more than 10 years after the effective date of the first reduction proclaimed to carry out such trade agreement with respect to such article.

(2) If any part of a reduction takes effect, then any time thereafter during which any part of the reduction is not in effect by reason of legislation of the United States or action thereunder, the effect of which is to maintain or increase the rate of duty on an article, shall be excluded in determining—

(A) the 1-year intervals referred to in subsection (a)(2) of this section, and

(B) the expiration of the 10-year period referred to in paragraph (1) of this subsection.

(Pub. L. 93–618, title I, §109, Jan. 3, 1975, 88 Stat. 1985; Pub. L. 96–39, title XI, §1106(c)(3), July 26, 1979, 93 Stat. 312.)

AMENDMENTS

1979—Subsec. (c)(2). Pub. L. 96–39 substituted ''any part of the reduction'' for ''such part of the reduction''.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective July 26, 1979, see section 1114 of Pub. L. 96–39, set out as an Effective Date note under section 2581 of this title.

STAGING OF CERTAIN TARIFF REDUCTIONS

Section 503 of Pub. L. 96–39 provided that:

''(a) IN GENERAL.—The aggregate reduction in the rate of duty applicable to items described in this subsection in effect on any day pursuant to a trade agreement entered into under section 101 of the Trade Act of 1974 [19 U.S.C. 2111] before January 3, 1980, may exceed the limitation in section 109(a) of such Act (19 U.S.C. 2119):

''(1) Items amended under section 223(d) of this Act [items 402.00 to 413.51 of the Tariff Schedules] to the extent that they apply to articles which the President determines were not imported into the United States before January 1, 1978, and were not produced in the United States before May 1, 1978.

''(2)(A) Items to the extent that they apply to articles which the President determines are not import sensitive and are the product of a least developed developing country as defined in the United Nations General Assembly list of ''Least Developed Countries'' and which are beneficiary developing countries under section 502 of the Trade Act of 1974 [19 U.S.C. 2462].

''(B) The President may at any time suspend the treatment accorded under subparagraph (A) in which case the aggregate reduction in effect for such products shall be the reduction in effect for countries other than least developed developing countries.

''(3) Item 628.57. Notwithstanding the first sentence of this subsection, the limitation in section 109(a) of the Trade Act of 1974 may be exceeded only to the extent necessary to permit an aggregate reduction of 4.8 percent ad valorem in the rate of duty in effect under such item during the first 1-year period after the effective date of the first reduction in the rate of duty proclaimed for such item.

''(4) Items 132.50, 170.10, 170.15, 170.20, 177.62, 186.15, and 429.47.

''(5) Items 306.31, 306.32, 306.33, and 306.34. Notwithstanding subsection (a), the limitation in section 109(a) of the Trade Act of 1974 may be exceeded only to the extent necessary to permit the total reduction proclaimed under section 101 of the Trade Act of 1974 relating to such item to take effect within 2 years after the effective date of the first reduction in the rate of duty proclaimed for such item.

''(6) Items for which the President determines the effective date of the first reduction will be after June 30, 1980, and before January 1, 1981, to the extent necessary to permit the second reduction to take effect on January 1, 1981.

''(b) OPPORTUNITY FOR COMMENT.—Before making any determination under subsection (a)(1) and (2), the President shall provide interested parties an opportunity to comment and shall publish his final determinations in the Federal Register before July 1, 1980.''

PART 2—OTHER AUTHORITY

§ 2131. Authorization of appropriation for GATT revision

There are authorized to be appropriated annually such sums as may be necessary for the payment by the United States of its share of the expenses of the Contracting Parties to the General Agreement on Tariffs and Trade. This authorization does not imply approval or disapproval by the Congress of all articles of the General Agreement on Tariffs and Trade.

(Pub. L. 93–618, title I, § 121, Jan. 3, 1975, 88 Stat. 1986; Pub. L. 96–39, title XI, § 1106(c)(2), July 26, 1979, 93 Stat. 311; Pub. L. 100–418, title I, § 1107(b)(2), Aug. 23, 1988, 102 Stat. 1135; Pub. L. 100–647, title IX, § 9001(a)(1), Nov. 10, 1988, 102 Stat. 3806.)

AMENDMENTS

1988—Pub. L. 100–647 substituted ''There are'' for ''(d) There are''.

Subsecs. (a) to (c). Pub. L. 100–418 struck out subsec. (a) which provided for bringing existing trade agreements into conformity with principles promoting open, nondiscriminatory, and fair world economic system, subsec. (b) which provided for agreements with foreign countries or instrumentalities, and subsec. (c) which provided for changes in Federal law through legislation implementing trade agreements.

1979—Subsec. (c). Pub. L. 96–39 substituted ''Such trade agreement may be entered into under section 2112 of this title'' for ''Such trade agreement may be submitted to the Congress for approval in accordance with the procedures of section 2191 of this title''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable as if such amendment took effect on Aug. 23, 1988, see section 9001(b) of Pub. L. 100–647, set out as an Effective and Termination Dates of 1988 Amendments note under section 58c of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective July 26, 1979, see section 1114 of Pub. L. 96–39, set out as an Effective Date note under section 2581 of this title.

§ 2132. Balance-of-payments authority

(a) Presidential proclamations of temporary import surcharges and temporary limitations on imports through quotas in situations of fundamental international payments problems

Whenever fundamental international payments problems require special import measures to restrict imports—

(1) to deal with large and serious United States balance-of-payments deficits.

(2) to prevent an imminent and significant depreciation of the dollar in foreign exchange markets, or

(3) to cooperate with other countries in correcting an international balance-of-payments disequilibrium,

the President shall proclaim, for a period not exceeding 150 days (unless such period is extended by Act of Congress)—

(A) a temporary import surcharge, not to exceed 15 percent ad valorem, in the form of duties (in addition to those already imposed, if any) on articles imported into the United States;

(B) temporary limitations through the use of quotas on the importation of articles into the United States; or

(C) both a temporary import surcharge described in subparagraph (A) and temporary limitations described in subparagraph (B).

The authority delegated under subparagraph (B) (and so much of subparagraph (C) as relates to subparagraph (B)) may be exercised (i) only if international trade or monetary agreements to which the United States is a party permit the imposition of quotas as a balance-of-payments measure, and (ii) only to the extent that the fundamental imbalance cannot be dealt with effectively by a surcharge proclaimed pursuant to subparagraph (A) or (C). Any temporary import surcharge proclaimed pursuant to subparagraph (A) or (C) shall be treated as a regular customs duty.

(b) Import restrictions not imposed when contrary to national interest of United States

If the President determines that the imposition of import restrictions under subsection (a) of this section will be contrary to the national interest of the United States, then he may refrain from proclaiming such restrictions and he shall—

(1) immediately inform Congress of his determination, and

(2) immediately convene the group of congressional official advisers designated under section 2211(a) of this title and consult with them as to the reasons for such determination.

(c) Presidential proclamations liberalizing imports

Whenever the President determines that fundamental international payments problems require special import measures to increase imports—

(1) to deal with large and persistent United States balance-of-trade surpluses, as determined on the basis of the cost-insurance-freight value of imports, as reported by the Bureau of the Census, or

(2) to prevent significant appreciation of the dollar in foreign exchange markets,

the President is authorized to proclaim, for a period of 150 days (unless such period is extended by Act of Congress)—

(A) a temporary reduction (of not more than 5 percent ad valorem) in the rate of duty on any article; and

(B) a temporary increase in the value or quantity of articles which may be imported under any import restriction, or a temporary suspension of any import restriction.

Import liberalizing actions proclaimed pursuant to this subsection shall be of broad and uniform application with respect to product coverage except that the President shall not proclaim measures under this subsection with respect to those articles where in his judgment such action will cause or contribute to material injury to firms or workers in any domestic industry, including agriculture, mining, fishing, or commerce, or to impairment of the national security, or will otherwise be contrary to the national interest.

(d) Nondiscriminatory treatment of import restricting actions

(1) Import restricting actions proclaimed pursuant to subsection (a) of this section shall be applied consistently with the principle of nondiscriminatory treatment. In addition, any quota proclaimed pursuant to subparagraph (B) of subsection (a) of this section shall be applied on a basis which aims at a distribution of trade with the United States approaching as closely as possible that which various foreign countries might have expected to obtain in the absence of such restrictions.

(2) Notwithstanding paragraph (1), if the President determines that the purposes of this section will best be served by action against one or more countries having large or persistent balance-of-payments surpluses, he may exempt all other countries from such action.

(3) After such time when there enters into force for the United States new rules regarding the application of surcharges as part of a reform of internationally agreed balance-of-payments adjustment procedures, the exemption authority contained in paragraph (2) shall be applied consistently with such new international rules.

(4) It is the sense of Congress that the President seek modifications in international agreements aimed at allowing the use of surcharges in place of quantitative restrictions (and providing rules to govern the use of such surcharges) as a balance-of-payments adjustment measure within the context of arrangements for an equitable sharing of balance-of-payments adjustment responsibility among deficit and surplus countries.

(e) Broad and uniform application of import restricting actions

Import restricting actions proclaimed pursuant to subsection (a) of this section shall be of broad and uniform application with respect to product coverage except where the President determines, consistently with the purposes of this section, that certain articles should not be subject to import restricting actions because of the needs of the United States economy. Such exceptions shall be limited to the unavailability of domestic supply at reasonable prices, the necessary importation of raw materials, avoiding serious dislocations in the supply of imported goods, and other similar factors. In addition, uniform exceptions may be made where import restricting actions will be unnecessary or ineffective in carrying out the purposes of this section, such as with respect to articles already subject to import restrictions, goods in transit, or goods under binding contract. Neither the authorization of import restricting actions nor the determination of exceptions with respect to product coverage shall be made for the purpose of protecting individual domestic industries from import competition.

(f) Quantitative limitations

Any quantitative limitation proclaimed pursuant to subparagraph (B) or (C) of subsection (a) of this section on the quantity or value, or both, of an article—

(1) shall permit the importation of a quantity or value which is not less than the quantity or value of such article imported into the United States from the foreign countries to which such limitation applies during the most recent period which the President determines is representative of imports of such article, and

(2) shall take into account any increase since the end of such representative period in domestic consumption of such article and like or similar articles of domestic manufacture or production.

(g) Suspension, modification, or termination of proclamations

The President may at any time, consistent with the provisions of this section, suspend, modify, or terminate, in whole or in part, any proclamation under this section either during the initial 150-day period of effectiveness or as extended by subsequent Act of Congress.

(h) Termination of tariff concessions

No provision of law authorizing the termination of tariff concessions shall be used to im-

pose a surcharge on imports into the United States.

(Pub. L. 93–618, title I, § 122, Jan. 3, 1975, 88 Stat. 1987.)

§ 2133. Compensation authority

(a) New concessions

Whenever—

(1) any action taken under part 1 of subchapter II of this chapter or subchapter III of this chapter, or under part 2 of subchapter IV of this chapter; or

(2) any judicial or administrative tariff reclassification that becomes final after August 23, 1988;

increases or imposes any duty or other import restriction, the President—

(A) may enter into trade agreements with foreign countries or instrumentalities for the purpose of granting new concessions as compensation in order to maintain the general level of reciprocal and mutually advantageous concessions; and

(B) may proclaim such modification or continuance of any existing duty, or such continuance of existing duty-free or excise treatment, as he determines to be required or appropriate to carry out any such agreement.

(b) Reductions in rates of duty

(1) No proclamation shall be made pursuant to subsection (a) of this section decreasing any rate of duty to a rate which is less than 70 percent of the existing rate of duty.

(2) Where the rate of duty in effect at any time is an intermediate stage under section 2902(a) of this title, the proclamation made pursuant to subsection (a) of this section may provide for the reduction of each rate of duty at each such stage proclaimed under such section 2902(a) of this title by not more than 30 percent of such rate of duty, and may provide for a final rate of duty which is not less than 70 percent of the rate of duty proclaimed as the final stage under such section 2902(a) of this title.

(3) If the President determines that such action will simplify the computation of the amount of duty imposed with respect to an article, he may exceed the limitations provided by paragraphs (1) and (2) of this subsection by not more than the lesser of—

(A) the difference between such limitation and the next lower whole number, or

(B) one-half of 1 percent ad valorem.

(4) Any concessions granted under subsection (a)(1) of this section shall be reduced and terminated according to substantially the same time schedule for reduction applicable to the relevant action under sections 2253(e) and 2254 of this title.

(c) Consideration of past violations of trade concessions

Before entering into any trade agreement under this section with any foreign country or instrumentality, the President shall consider whether such country or instrumentality has violated trade concessions of benefit to the United States and such violation has not been adequately offset by the action of the United States or by such country or instrumentality.

(d) Basic authority for trade agreements as authority for granting new concessions as compensation

Notwithstanding the provisions of subsection (a) of this section, the authority delegated under section 2902 of this title shall be used for the purpose of granting new concessions as compensation within the meaning of this section until such authority terminates.

(e) International obligations determination prerequisite to application of authority

The provisions of this section shall apply by reason of action taken under subchapter III of this chapter only if the President determines that action authorized under this section is necessary or appropriate to meet the international obligations of the United States.

(Pub. L. 93–618, title I, § 123, Jan. 3, 1975, 88 Stat. 1989; Pub. L. 100–418, title I, §§ 1104, 1401(b)(1)(A), Aug. 23, 1988, 102 Stat. 1132, 1239; Pub. L. 106–286, div. A, title I, § 104, Oct. 10, 2000, 114 Stat. 891.)

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–286 inserted ‘‘, or under part 2 of subchapter IV of this chapter’’ after ‘‘subchapter III of this chapter’’.

1988—Subsec. (a). Pub. L. 100–418, § 1104(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ‘‘Whenever any action has been taken under section 2253 of this title to increase or impose any duty or other import restriction, the President—

‘‘(1) may enter into trade agreements with foreign countries or instrumentalities for the purpose of granting new concessions as compensation in order to maintain the general level of reciprocal and mutually advantageous concessions; and

‘‘(2) may proclaim such modification or continuance of any existing duty, or such continuance of existing duty-free or excise treatment, as he determines to be required or appropriate to carry out any such agreement.’’

Subsec. (b)(2). Pub. L. 100–418, § 1104(2), substituted ‘‘section 2902(a)’’ for ‘‘section 2119’’ and ‘‘such section 2902(a)’’ for ‘‘section 2111’’ in two places.

Subsec. (b)(4). Pub. L. 100–418, § 1401(b)(1)(A), substituted ‘‘action under sections 2253(e) and 2254 of this title’’ for ‘‘import relief under section 2253(h) of this title’’.

Subsec. (d). Pub. L. 100–418, § 1104(3), substituted ‘‘section 2902’’ for ‘‘section 2111’’.

Subsec. (e). Pub. L. 100–418, § 1104(4), added subsec. (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1401(b)(1)(A) of Pub. L. 100–418 effective Aug. 23, 1988, and applicable with respect to investigations initiated under part 1 (§ 2251 et seq.) of subchapter III of this chapter on or after that date, see section 1401(c) of Pub. L. 100–418, set out as a note under section 2251 of this title.

§ 2134. Two-year residual authority to negotiate duties

(a) Trade agreements

Whenever the President determines that any existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes of this chapter will be promoted thereby, the President—

(1) may enter into trade agreements with foreign countries or instrumentalities thereof, and

(2) may proclaim such modification or continuance of any existing duty, such continuance of existing duty-free or excise treatment, or such additional duties, as he determines to be required or appropriate to carry out any such trade agreement.

(b) Maximum volume of imported articles subject to reduction of duties or continuance of duty-free or excise treatment

Agreements entered into under this section in any 1-year period shall not provide for the reduction of duties, or the continuance of duty-free or excise treatment, for articles which account for more than 2 percent of the value of United States imports for the most recent 12-month period for which import statistics are available.

(c) Maximum reduction in duties

(1) No proclamation shall be made pursuant to subsection (a) of this section decreasing any rate of duty to a rate which is less than 80 percent of the existing rate of duty.

(2) No proclamation shall be made pursuant to subsection (a) of this section decreasing or increasing any rate of duty to a rate which is lower or higher than the corresponding rate which would have resulted if the maximum authority granted by section 2111 of this title with respect to such article had been exercised.

(3) Where the rate of duty in effect at any time is an intermediate stage under section 2119 of this title, the proclamation made pursuant to subsection (a) of this section may provide for the reduction of each rate of duty at each such stage proclaimed under section 2111 of this title by not more than 20 percent of such rate of duty, and, subject to the limitation in paragraph (2), may provide for a final rate of duty which is not less than 80 percent of the rate of duty proclaimed as the final stage under section 2111 of this title.

(4) If the President determines that such action will simplify the computation of the amount of duty imposed with respect to an article, he may exceed the limitations provided by paragraphs (1) and (2) of this subsection by not more than the lesser of—

(A) the difference between such limitation and the next lower whole number, or

(B) one-half of 1 percent ad valorem.

(d) Two-year period of authority

Agreements may be entered into under this section only during the 2-year period which immediately follows the close of the period during which agreements may be entered into under section 2111 of this title.

(Pub. L. 93–618, title I, §124, Jan. 3, 1975, 88 Stat. 1990.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

§ 2135. Termination and withdrawal authority

(a) Grant of authority for termination or withdrawal at end of period specified in agreement

Every trade agreement entered into under this chapter shall be subject to termination, in whole or in part, or withdrawal, upon due notice, at the end of a period specified in the agreement. Such period shall be not more than 3 years from the date on which the agreement becomes effective. If the agreement is not terminated or withdrawn from at the end of the period so specified, it shall be subject to termination or withdrawal thereafter upon not more than 6 months' notice.

(b) Authority to terminate proclamations at any time

The President may at any time terminate, in whole or in part, any proclamation made under this chapter.

(c) Increased duties or other import restrictions following withdrawal, suspension, or modification of obligations with respect to trade of foreign countries or instrumentalities

Whenever the United States, acting in pursuance of any of its rights or obligations under any trade agreement entered into pursuant to this chapter, section 1821 of this title, or section 1351 of this title, withdraws, suspends, or modifies any obligation with respect to the trade of any foreign country or instrumentality thereof, the President is authorized to proclaim increased duties or other import restrictions, to the extent, at such times, and for such periods as he deems necessary or appropriate, in order to exercise the rights or fulfill the obligations of the United States. No proclamation shall be made under this subsection increasing any existing duty to a rate more than 50 percent above the rate set forth in rate column numbered 2 of the Tariff Schedules of the United States, as in effect on January 1, 1975, or 20 percent ad valorem above the rate existing on January 1, 1975, whichever is higher.

(d) Retaliatory authority

Whenever any foreign country or instrumentality withdraws, suspends, or modifies the application of trade agreement obligations of benefit to the United States without granting adequate compensation therefor, the President, in pursuance of rights granted to the United States under any trade agreement and to the extent necessary to protect United States economic interests (including United States balance of payments), may—

(1) withdraw, suspend, or modify the application of substantially equivalent trade agreement obligations of benefit to such foreign country or instrumentality, and

(2) proclaim under subsection (c) of this section such increased duties or other import restrictions as are appropriate to effect adequate compensation from such foreign country or instrumentality.

(e) Continuation of duties or other import restrictions after termination of or withdrawal from agreements

Duties or other import restrictions required or appropriate to carry out any trade agreement

entered into pursuant to this chapter, section 1821 of this title, or section 1351 of this title shall not be affected by any termination, in whole or in part, of such agreement or by the withdrawal of the United States from such agreement and shall remain in effect after the date of such termination or withdrawal for 1 year, unless the President by proclamation provides that such rates shall be restored to the level at which they would be but for the agreement. Within 60 days after the date of any such termination or withdrawal, the President shall transmit to the Congress his recommendations as to the appropriate rates of duty for all articles which were affected by the termination or withdrawal or would have been so affected but for the preceding sentence.

(f) Public hearings

Before taking any action pursuant to subsection (b), (c), or (d) of this section, the President shall provide for a public hearing during the course of which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard, unless he determines that such prior hearings will be contrary to the national interest because of the need for expeditious action, in which case he shall provide for a public hearing promptly after such action.

(Pub. L. 93–618, title I, § 125, Jan. 3, 1975, 88 Stat. 1991.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b), (c), (e), was in the original ''this Act'', meaning Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

The Tariff Schedules of the United States, referred to in subsec. (c), to be treated as a reference to the Harmonized Tariff Schedule pursuant to section 3012 of this title. The Harmonized Tariff Schedule is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

AUTHORITY TO INCREASE DUTIES ON IMPORTS OF CERTAIN TOBACCO AND TOBACCO PRODUCTS

Pub. L. 103–465, title IV, § 421, Dec. 8, 1994, 108 Stat. 4964, provided that:

''(a) IN GENERAL.—In the application of section 125(c) of the Trade Act of 1974 (19 U.S.C. 2135) with respect to any item provided for in subheadings 2401.10.60, 2401.20.30, 2401.20.80, 2401.30.30, 2401.30.60, 2401.30.90, 2403.10.00, 2403.91.40, or 2403.99.00 of the HTS, '350' shall be substituted for '20' where it appears in such section.

''(b) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Dec. 8, 1994].''

TARIFF REDUCTIONS UNDER TRADE AGREEMENTS ACT OF 1979

Pub. L. 96–39, title V, § 502(b), July 26, 1979, 93 Stat. 251, provided that: ''For purposes of section 125 (19 U.S.C. 2135) of the Trade Act of 1974 the amendments made under sections 508, 511, 512, and 513 [amending items 135.41, 135.42, 750.26, 750.27, 750.28, 870.45, 905.10, and 905.11 of the Tariff Schedules of the United States. See Publication of Tariff Schedules note under section 1202 of this title] not including the rates of duty appearing in rate column numbered 2, if any, shall be considered to be trade agreement obligations entered into under the Trade Act of 1974 [this chapter], of benefit to foreign countries or instrumentalities.''

Pub. L. 96–39, title VI, § 601(b), July 26, 1979, 93 Stat. 268, provided that: ''For purposes of section 125 of the Trade Act of 1974 [this section], the amendments made under subsection (a), if any [amending the Tariff Schedules of the United States with regard to civil aircraft (see Publication of Tariff Schedules note under section 1202), and, amending section 1466 of this title], shall be considered to be trade agreement obligations entered into under the Trade Act of 1974 [this chapter] of benefit to foreign countries or instrumentalities.''

Rates of duty proclaimed under section 855(a) of Pub. L. 96–39 (covering spirits, spiritous beverages, and beverage preparations) to be deemed, for purposes of this section, a trade agreement obligation which is of benefit to a foreign country or instrumentality, and, in the case of any item affected by such a proclamation, the last sentence of subsec. (c) of this section to be applied as if it authorized (in addition to any increase authorized therein) an increase up to the rate of duty for such item set forth in rate column numbered 1 of subpart D of part 12 of schedule 1 of the Tariff Schedules of the United States (see Publication of Tariff Schedules note under section 1202 of this title) as amended by section 852 of Pub. L. 96–39, see section 855(b) of Pub. L. 96–39.

REVIEW OF INTERNATIONAL TRADE IN ALCOHOLIC BEVERAGES

Pub. L. 96–39, title VIII, § 854, July 26, 1979, 93 Stat. 294, provided that:

''(a) REVIEW.—The President shall review foreign tariff and nontariff barriers affecting United States exports of alcoholic beverages. Not later than January 1, 1982, the President shall report to the Congress the results of his review.

''(b) WITHDRAWAL OF CONCESSIONS.—If, as the result of his review under subsection (a), the President determines that a foreign country or instrumentality has not implemented concessions to the United States affecting alcoholic beverages which were negotiated in trade agreements entered into before January 3, 1980, under the authority of title I of the Trade Act of 1974 [this subchapter], the President shall withdraw, suspend, or modify the application of substantially equivalent trade agreement obligations of benefit to such foreign country or instrumentality under section 125 of the Trade Act of 1974 (19 U.S.C. 2135).

''(c) FURTHER NEGOTIATIONS TO REMOVE BARRIERS.—If, as the result of his review under subsection (a), the President determines that foreign tariff or nontariff barriers are unduly burdening or restricting the United States exports of alcoholic beverages, he shall enter into negotiations under the Trade Act of 1974 [this chapter] to eliminate or reduce such barriers.''

§ 2136. Reciprocal nondiscriminatory treatment

(a) Direct and indirect imports

Except as otherwise provided in this chapter or in any other provision of law, any duty or other import restriction or duty-free treatment proclaimed in carrying out any trade agreement under this subchapter shall apply to products of all foreign countries, whether imported directly or indirectly.

(b) Presidential determination of whether major industrial countries have made substantially equivalent concessions to the United States

The President shall determine, after the conclusion of all negotiations entered into under this chapter or at the end of the 5-year period beginning on January 3, 1975, whichever is earlier, whether any major industrial country has failed to make concessions under trade agreements entered into under this chapter which provide competitive opportunities for the commerce of the United States in such country substantially equivalent to the competitive opportunities, provided by concessions made by the

United States under trade agreements entered into under this chapter, for the commerce of such country in the United States.

(c) Major industrial countries

For purposes of this section, ''major industrial country'' means Canada, the European Economic Community, the individual member countries of such Community, Japan, and any other foreign country designated by the President for purposes of this subsection.

(Pub. L. 93–618, title I, § 126, Jan. 3, 1975, 88 Stat. 1992; Pub. L. 105–362, title XIV, § 1401(b)(1), Nov. 10, 1998, 112 Stat. 3294.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original ''this Act'', meaning Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

AMENDMENTS

1998—Subsecs. (c), (d). Pub. L. 105–362 redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to recommendations to Congress for legislation following a Presidential determination that a major industrial country failed to grant equivalent concessions.

§ 2137. Reservation of articles for national security or other reasons

(a) National security considerations

No proclamation shall be made pursuant to the provisions of this chapter reducing or eliminating the duty or other import restriction on any article if the President determines that such reduction or elimination would threaten to impair the national security.

(b) Action taken under other laws

While there is in effect with respect to any article any action taken under section 2253 of this title, or section 1862 or 1981 of this title, the President shall reserve such article from negotiations under this subchapter (and from any action under section 2132(c) of this title) contemplating reduction or elimination of—

(A) any duty on such article,

(B) any import restriction imposed under such section, or

(C) any other import restriction, the removal of which will be likely to undermine the effect of the import restrictions referred to in subparagraph (B).

In addition, the President shall also so reserve any other article which he determines to be appropriate, taking into consideration information and advice available pursuant to and with respect to the matters covered by sections 2151, 2152, and 2153 of this title, where applicable.

(Pub. L. 93–618, title I, § 127(a), (b), Jan. 3, 1975, 88 Stat. 1993.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

CODIFICATION

Section is comprised of subsecs. (a) and (b) of section 127 of act Jan. 3, 1975. Subsec. (c) of such section was classified to section 1863 of this title, prior to its repeal by Pub. L. 100–418, title I, § 1501(b)(2), Aug. 23, 1988, 102 Stat. 1259, and subsec. (d) amended section 1862 of this title.

§ 2138. Omitted

CODIFICATION

Section, Pub. L. 93–618, title I, § 128, as added Pub. L. 98–573, title III, § 308(b)(1), Oct. 30, 1984, 98 Stat. 3013; amended Pub. L. 99–514, title XVIII, § 1887(b)(1), Oct. 22, 1986, 100 Stat. 2924; Pub. L. 100–418, title I, §§ 1214(j)(1), 1215, Aug. 23, 1988, 102 Stat. 1158, 1163; Pub. L. 100–647, title IX, § 9001(a)(3), Nov. 10, 1988, 102 Stat. 3806, related to modification and continuance of treatment with respect to duties on high technology products, was omitted pursuant to subsec. (c) which provided that the President could exercise authority under this section only during the 5-year period beginning on Oct. 30, 1984.

PART 3—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS

§ 2151. Advice from International Trade Commission

(a) Lists of articles which may be considered for action

(1) In connection with any proposed trade agreement under section 2133 of this title or section 3803(a) or (b) of this title, the President shall from time to time publish and furnish the International Trade Commission (hereafter in this section referred to as the ''Commission'') with lists of articles which may be considered for modification or continuance of United States duties, continuance of United States duty-free or excise treatment, or additional duties. In the case of any article with respect to which consideration may be given to reducing or increasing the rate of duty, the list shall specify the provision of this subchapter under which such consideration may be given.

(2) In connection with any proposed trade agreement under section 3803(b) of this title, the President may from time to time publish and furnish the Commission with lists of nontariff matters which may be considered for modification.

(b) Advice to President by Commission

Within 6 months after receipt of a list under subsection (a) of this section or, in the case of a list submitted in connection with a trade agreement, within 90 days after receipt of such list, the Commission shall advise the President, with respect to each article or nontariff matter, of its judgment as to the probable economic effect of modification of the tariff or nontariff measure on industries producing like or directly competitive articles and on consumers, so as to assist the President in making an informed judgment as to the impact which might be caused by such modifications on United States interests, such as sectors involved in manufacturing, agriculture, mining, fishing, services, intellectual property, investment, labor, and consumers. Such advice may include in the case of any article the advice of the Commission as to whether any reduction in the rate of duty should take place over a longer period of time than the mini-

mum period provided for in section 3803(a)(3)(A) of this title.

(c) Additional investigations and reports requested by President or Trade Representative

In addition, in order to assist the President in his determination whether to enter into any agreement under section 2133 of this title or section 3803 of this title, or how to develop trade policy, priorities or other matters (such as priorities for actions to improve opportunities in foreign markets), the Commission shall make such investigations and reports as may be requested by the President or the United States Trade Representative on matters such as effects of modification of any barrier to (or other distortion of) international trade on domestic workers, industries or sectors, purchasers, prices and quantities of articles in the United States.

(d) Commission steps in preparing its advice to President

In preparing its advice to the President under this section, the Commission shall to the extent practicable—

(1) investigate conditions, causes, and effects relating to competition between the foreign industries producing the articles or services in question and the domestic industries producing the like or directly competitive articles or services;

(2) analyze the production, trade, and consumption of each like or directly competitive article or service, taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production;

(3) describe the probable nature and extent of any significant change in employment, profit levels, and use of productive facilities; the overall impact of such or other possible changes on the competitiveness of relevant domestic industries or sectors; and such other conditions as it deems relevant in the domestic industries or sectors concerned which it believes such modifications would cause; and

(4) make special studies (including studies of real wages paid in foreign supplying countries), whenever deemed to be warranted, of particular proposed modifications affecting United States manufacturing, agriculture, mining, fishing, labor, consumers, services, intellectual property and investment, using to the fullest extent practicable United States Government facilities abroad and appropriate personnel of the United States.

(e) Public hearings

In preparing its advice to the President under this section, the Commission shall, after reasonable notice, hold public hearings.

(Pub. L. 93–618, title I, § 131, Jan. 3, 1975, 88 Stat. 1994; Pub. L. 100–418, title I, § 1111(a), Aug. 23, 1988, 102 Stat. 1135; Pub. L. 107–210, div. B, title XXI, § 2110(a)(2), Aug. 6, 2002, 116 Stat. 1019.)

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–210, § 2110(a)(2)(A)(i), substituted ''section 2133 of this title or section 3803(a) or (b) of this title,'' for ''section 2133 of this title or section 2902(a) or (c) of this title,''.

Subsec. (a)(2). Pub. L. 107–210, § 2110(a)(2)(A)(ii), substituted ''section 3803(b) of this title'' for ''section 2902(b) or (c) of this title''.

Subsec. (b). Pub. L. 107–210, § 2110(a)(2)(B), substituted ''section 3803(a)(3)(A) of this title'' for ''section 2902(a)(3)(A) of this title''.

Subsec. (c). Pub. L. 107–210, § 2110(a)(2)(C), substituted ''section 3803 of this title,'' for ''section 2902 of this title,''.

1988—Pub. L. 100–418 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), lists of articles which could be considered for modification or continuance of duties, duty-free or excise treatment, or additional duties; in subsec. (b), advice to President following receipt of list by Commission; in subsec. (c), additional investigations and reports requested by President; in subsec. (d), Commission steps in preparing its advice to President; and in subsec. (e), public hearings.

DELEGATION OF AUTHORITY

For delegation of functions of President under div. B of Pub. L. 107–210, amending this section, see section 1 of Ex. Ord. No. 13277, Nov. 19, 2002, 67 F.R. 70305, set out as a note under section 3801 of this title.

§ 2152. Advice from executive departments and other sources

Before any trade agreement is entered into under section 2133 of this title or section 3803 of this title, the President shall seek information and advice with respect to such agreement from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State and the Treasury, from the United States Trade Representative, and from such other sources as he may deem appropriate. Such advice shall be prepared and presented consistent with the provisions of Reorganization Plan Number 3 of 1979, Executive Order Number 12188 and section 2171(c) of this title.

(Pub. L. 93–618, title I, § 132, Jan. 3, 1975, 88 Stat. 1995; Pub. L. 100–418, title I, § 1111(a), Aug. 23, 1988, 102 Stat. 1137; Pub. L. 107–210, div. B, title XXI, § 2110(a)(3), Aug. 6, 2002, 116 Stat. 1020.)

REFERENCES IN TEXT

Reorganization Plan Number 3 of 1979, referred to in text, is set out as a note under section 2171 of this title.

Executive Order Number 12188, referred to in text, is set out as a note under section 2171 of this title.

AMENDMENTS

2002—Pub. L. 107–210 substituted ''section 3803 of this title,'' for ''section 2902 of this title,''.

1988—Pub. L. 100–418 amended section generally. Prior to amendment, section read as follows: ''Before any trade agreement is entered into under part 1 of this subchapter or section 2133 or 2134 of this title, the President shall seek information and advice with respect to such agreement from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State and the Treasury, from the United States Trade Representative, and from such other sources as he may deem appropriate.''

DELEGATION OF AUTHORITY

For delegation of functions of President under div. B of Pub. L. 107–210, amending this section, see section 1 of Ex. Ord. No. 13277, Nov. 19, 2002, 67 F.R. 70305, set out as a note under section 3801 of this title.

§ 2153. Public hearings

(a) Opportunity for presentation of views

In connection with any proposed trade agreement under section 2133 of this title or section 3803 of this title, the President shall afford an opportunity for any interested person to present his views concerning any article on a list published under section 2151 of this title, any matter or article which should be so listed, any concession which should be sought by the United States, or any other matter relevant to such proposed trade agreement. For this purpose, the President shall designate an agency or an interagency committee which shall, after reasonable notice, hold public hearings and prescribe regulations governing the conduct of such hearings. When appropriate, such procedures shall apply to the development of trade policy and priorities.

(b) Summary of hearings

The organization holding such hearing shall furnish the President with a summary thereof.

(Pub. L. 93–618, title I, § 133, Jan. 3, 1975, 88 Stat. 1995; Pub. L. 100–418, title I, § 1111(a), Aug. 23, 1988, 102 Stat. 1137; Pub. L. 107–210, div. B, title XXI, § 2110(a)(3), Aug. 6, 2002, 116 Stat. 1020.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–210 substituted ''section 3803 of this title,'' for ''section 2902 of this title,''.

1988—Pub. L. 100–418 amended section generally. Prior to amendment, section read as follows:

''(a) In connection with any proposed trade agreement under part 1 of this subchapter or section 2133 or 2134 of this title, the President shall afford an opportunity for any interested person to present his views concerning any article on a list published pursuant to section 2151 of this title, any article which should be so listed, any concession which should be sought by the United States, or any other matter relevant to such proposed trade agreement. For this purpose, the President shall designate an agency or an interagency committee which shall, after reasonable notice, hold public hearings and prescribe regulations governing the conduct of such hearings.

''(b) The organization holding such hearings shall furnish the President with a summary thereof.''

DELEGATION OF AUTHORITY

For delegation of functions of President under div. B of Pub. L. 107–210, amending this section, see section 1 of Ex. Ord. No. 13277, Nov. 19, 2002, 67 F.R. 70305, set out as a note under section 3801 of this title.

§ 2154. Prerequisites for offers

(a) In any negotiation seeking an agreement under section 2133 of this title or section 3803 of this title, the President may make a formal offer for the modification or continuance of any United States duty, import restrictions, or barriers to (or other distortions of) international trade, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, import restrictions, or other barrier to (or other distortion of) international trade including trade in services, foreign direct investment and intellectual property as covered by this subchapter, with respect to any article or matter only after he has received a summary of the hearings at which an opportunity to be heard with respect to such article has been afforded under section 2153 of this title. In addition, the President may make an offer for the modification or continuance of any United States duty, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, with respect to any article included in a list published and furnished under section 2151(a) of this title, only after he has received advice concerning such article from the Commission under section 2151(b) of this title, or after the expiration of the 6-month or 90-day period provided for in that section, as appropriate, whichever first occurs.

(b) In determining whether to make offers described in subsection (a) of this section in the course of negotiating any trade agreement under section 3803 of this title, and in determining the nature and scope of such offers, the President shall take into account any advice or information provided, or reports submitted, by—

(1) the Commission;

(2) any advisory committee established under section 2155 of this title; or

(3) any organization that holds public hearings under section 2153 of this title;

with respect to any article, or domestic industry, that is sensitive, or potentially sensitive, to imports.

(Pub. L. 93–618, title I, § 134, Jan. 3, 1975, 88 Stat. 1995; Pub. L. 100–418, title I, § 1111(a), Aug. 23, 1988, 102 Stat. 1137; Pub. L. 107–210, div. B, title XXI, § 2110(a)(3), (4), Aug. 6, 2002, 116 Stat. 1020.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–210, § 2110(a)(3), substituted ''section 3803 of this title,'' for ''section 2902 of this title,''.

Subsec. (b). Pub. L. 107–210, § 2110(a)(4), substituted ''section 3803 of this title'' for ''section 2902 of this title'' in introductory provisions.

1988—Pub. L. 100–418 amended section generally. Prior to amendment, section read as follows: ''In any negotiations seeking an agreement under part 1 of this subchapter or section 2133 or 2134 of this title, the President may make an offer for the modification or continuance of any United States duty, import restrictions, or barriers to (or other distortions of) international trade, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, import restriction, or other barrier to (or other distortion of) international trade, with respect to any article only after he has received a summary of the hearings at which an opportunity to be heard with respect to such article has been afforded under section 2153 of this title. In addition, the President may make an offer for the modification or continuance of any United States duty, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, with respect to any article included in a list published and furnished under section 2151(a) of this title, only after he has received advice concerning such article from the International Trade Commission under section 2151(b) of this title, or after the expiration of the 6-month or 90-day period provided for in that section, as appropriate, whichever first occurs.''

DELEGATION OF AUTHORITY

For delegation of functions of President under div. B of Pub. L. 107–210, amending this section, see section 1 of Ex. Ord. No. 13277, Nov. 19, 2002, 67 F.R. 70305, set out as a note under section 3801 of this title.

§ 2155. Information and advice from private and public sectors

(a) In general

(1) The President shall seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to—

(A) negotiating objectives and bargaining positions before entering into a trade agreement under this subchapter or section 3803 of this title;

(B) the operation of any trade agreement once entered into, including preparation for dispute settlement panel proceedings to which the United States is a party; and

(C) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States, including those matters referred to in Reorganization Plan Number 3 of 1979 and Executive Order Numbered 12188, and the priorities for actions thereunder.

To the maximum extent feasible, such information and advice on negotiating objectives shall be sought and considered before the commencement of negotiations.

(2) The President shall consult with representative elements of the private sector and the non-Federal governmental sector on the overall current trade policy of the United States. The consultations shall include, but are not limited to, the following elements of such policy:

(A) The principal multilateral and bilateral trade negotiating objectives and the progress being made toward their achievement.

(B) The implementation, operation, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolution of trade disputes.

(C) The actions taken under the trade laws of the United States and the effectiveness of such actions in achieving trade policy objectives.

(D) Important developments in other areas of trade for which there must be developed a proper policy response.

(3) The President shall take the advice received through consultation under paragraph (2) into account in determining the importance which should be placed on each major objective and negotiating position that should be adopted in order to achieve the overall trade policy of the United States.

(b) Advisory Committee for Trade Policy and Negotiations

(1) The President shall establish an Advisory Committee for Trade Policy and Negotiations to provide overall policy advice on matters referred to in subsection (a) of this section. The committee shall be composed of not more than 45 individuals and shall include representatives of non-Federal governments, labor, industry, agriculture, small business, service industries, retailers, nongovernmental environmental and conservation organizations, and consumer interests. The committee shall be broadly representative of the key sectors and groups of the economy, particularly with respect to those sectors and groups which are affected by trade. Members of the committee shall be recommended by the United States Trade Representative and appointed by the President for a term of 4 years or until the committee is scheduled to expire. An individual may be reappointed to committee for any number of terms. Appointments to the Committee[1] shall be made without regard to political affiliation.

(2) The committee shall meet as needed at the call of the United States Trade Representative or at the call of two-thirds of the members of the committee. The chairman of the committee shall be elected by the committee from among its members.

(3) The United States Trade Representative shall make available to the committee such staff, information, personnel, and administrative services and assistance as it may reasonably require to carry out its activities.

(c) General policy, sectoral, or functional advisory committees

(1) The President may establish individual general policy advisory committees for industry, labor, agriculture, services, investment, defense, and other interests, as appropriate, to provide general policy advice on matters referred to in subsection (a) of this section. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, service, investment, defense, and other interests, respectively, including small business interests, and shall be organized by the United States Trade Representative and the Secretaries of Commerce, Defense, Labor, Agriculture, the Treasury, or other executive departments, as appropriate. The members of such committees shall be appointed by the United States Trade Representative in consultation with such Secretaries.

(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, shall—

(A) consult with interested private organizations; and

(B) take into account such factors as—

(i) patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,

(ii) the character of the nontariff barriers and other distortions affecting such competition,

(iii) the necessity for reasonable limits on the number of such advisory committees,

(iv) the necessity that each committee be reasonably limited in size, and

(v) in the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

(3) The President—

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[1] So in original. Probably should not be capitalized.

(A) may, if necessary, establish policy advisory committees representing non-Federal governmental interests to provide policy advice—

(i) on matters referred to in subsection (a) of this section, and

(ii) with respect to implementation of trade agreements, and

(B) shall include as members of committees established under subparagraph (A) representatives of non-Federal governmental interests if he finds such inclusion appropriate after consultation by the United States Trade Representative with such representatives.

(4) Appointments to each committee established under paragraph (1), (2), or (3) shall be made without regard to political affiliation.

(d) Policy, technical, and other advice and information

Committees established under subsection (c) of this section shall meet at the call of the United States Trade Representative and the Secretaries of Agriculture, Commerce, Labor, Defense, or other executive departments, as appropriate, to provide policy advice, technical advice and information, and advice on other factors relevant to the matters referred to in subsection (a) of this section.

(e) Meeting of advisory committees at conclusion of negotiations

(1) The Advisory Committee for Trade Policy and Negotiations, each appropriate policy advisory committee, and each sectoral or functional advisory committee, if the sector or area which such committee represents is affected, shall meet at the conclusion of negotiations for each trade agreement entered into under section 3803 of this title, to provide to the President, to Congress, and to the United States Trade Representative a report on such agreement. Each report that applies to a trade agreement entered into under section 3803 of this title shall be provided under the preceding sentence not later than the date on which the President notifies the Congress under section 3805(a)(1)(A) of this title of his intention to enter into that agreement.

(2) The report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee shall include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives set forth in section 3802 of this title, as appropriate.

(3) The report of the appropriate sectoral or functional committee under paragraph (1) shall include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sector or within the functional area.

(f) Application of Federal Advisory Committee Act

The provisions of the Federal Advisory Committee Act apply—

(1) to the Advisory Committee for Trade Policy and Negotiations established under subsection (b) of this section; and

(2) to all other advisory committees which may be established under subsection (c) of this section, except that—

(A) the meetings of advisory committees established under subsections (b) and (c) of this section shall be exempt from the requirements of subsections (a) and (b) of sections 10 and 11 of the Federal Advisory Committee Act (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or the President's designee that such meetings will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives, or bargaining positions with respect to matters referred to in subsection (a) of this section, and that meetings may be called of such special task forces, plenary meetings of chairmen, or other such groups made up of members of the committees established under subsections (b) and (c) of this section; and

(B) notwithstanding subsection (a)(2) of section 14 of the Federal Advisory Committee Act, any committee established under subsection (b) or (c) of this section may, in the discretion of the President or the President's designee, terminate not later than the expiration of the 4-year period beginning on the date of its establishment.

(g) Trade secrets and confidential information

(1) Trade secrets and commercial or financial information which is privileged or confidential, and which is submitted in confidence by the private sector or non-Federal government to officers or employees of the United States in connection with trade negotiations, may be disclosed upon request to—

(A) officers and employees of the United States designated by the United States Trade Representative;

(B) members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate who are designated as official advisers under section 2211(a)(1) of this title or are designated by the chairmen of either such committee under section 2211(b)(3)(A) of this title and staff members of either such committee designated by the chairmen under section 2211(b)(3)(A) of this title; and

(C) members of any committee of the House or Senate or any joint committee of Congress who are designated as advisers under section 2211(a)(2) of this title or designated by the chairman of such committee under section 2211(b)(3)(B) of this title and staff members of such committee designated under section 2211(b)(3)(B) of this title, but disclosure may be made under this subparagraph only with respect to trade secrets or commercial or financial information that is relevant to trade policy matters or negotiations that are within the legislative jurisdiction of such committee;

for use in connection with matters referred to in subsection (a) of this section.

(2) Information other than that described in paragraph (1), and advice submitted in confidence by the private sector or non-Federal government to officers or employees of the United

States, to the Advisory Committee for Trade Policy and Negotiations, or to any advisory committee established under subsection (c) of this section, in connection with matters referred to in subsection (a) of this section, may be disclosed upon request to—

(A) the individuals described in paragraph (1); and

(B) the appropriate advisory committee established under this section.

(3) Information submitted in confidence by officers or employees of the United States to the Advisory Committee for Trade Policy and Negotiations, or to any advisory committee established under subsection (c) of this section, may be disclosed in accordance with rules issued by the United States Trade Representative and the Secretaries of Commerce, Labor, Defense, Agriculture, or other executive departments, as appropriate, after consultation with the relevant advisory committees established under subsection (c) of this section. Such rules shall define the categories of information which require restricted or confidential handling by such committee considering the extent to which public disclosure of such information can reasonably be expected to prejudice the development of trade policy, priorities, or United States negotiating objectives. Such rules shall, to the maximum extent feasible, permit meaningful consultations by advisory committee members with persons affected by matters referred to in subsection (a) of this section.

(h) Advisory committee support

The United States Trade Representative, and the Secretaries of Commerce, Labor, Defense, Agriculture, the Treasury, or other executive departments, as appropriate, shall provide such staff, information, personnel, and administrative services and assistance to advisory committees established under subsection (c) of this section as such committees may reasonably require to carry out their activities.

(i) Consultation with advisory committees; procedures; nonacceptance of committee advice or recommendations

It shall be the responsibility of the United States Trade Representative, in conjunction with the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, to adopt procedures for consultation with and obtaining information and advice from the advisory committees established under subsection (c) of this section on a continuing and timely basis. Such consultation shall include the provision of information to each advisory committee as to—

(1) significant issues and developments; and

(2) overall negotiating objectives and positions of the United States and other parties;

with respect to matters referred to in subsection (a) of this section. The United States Trade Representative shall not be bound by the advice or recommendations of such advisory committees, but shall inform the advisory committees of significant departures from such advice or recommendations made. In addition, in the course of consultations with the Congress under this subchapter, information on the advice and information provided by advisory committees shall be made available to congressional advisers.

(j) Private organizations or groups

In addition to any advisory committee established under this section, the President shall provide adequate, timely and continuing opportunity for the submission on an informal basis (and, if such information is submitted under the provisions of subsection (g) of this section, on a confidential basis) by private organizations or groups, representing government, labor, industry, agriculture, small business, service industries, consumer interests, and others, of statistics, data and other trade information, as well as policy recommendations, pertinent to any matter referred to in subsection (a) of this section.

(k) Scope of participation by members of advisory committees

Nothing contained in this section shall be construed to authorize or permit any individual to participate directly in any negotiation of any matters referred to in subsection (a) of this section. To the maximum extent practicable, the members of the committees established under subsections (b) and (c) of this section, and other appropriate parties, shall be informed and consulted before and during any such negotiations. They may be designated as advisors to a negotiating delegation, and may be permitted to participate in international meetings to the extent the head of the United States delegation deems appropriate. However, they may not speak or negotiate for the United States.

***(l)* Advisory committees established by Department of Agriculture**

The provisions of title XVIII of the Food and Agriculture Act of 1977 (7 U.S.C. 2281 et seq.) shall not apply to any advisory committee established under subsection (c) of this section.

(m) "Non-Federal government" defined

As used in this section, the term ''non-Federal government'' means—

(1) any State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof; or

(2) any agency or instrumentality of any entity described in paragraph (1).

(Pub. L. 93–618, title I, § 135, Jan. 3, 1975, 88 Stat. 1996; Pub. L. 96–39, title XI, § 1103, July 26, 1979, 93 Stat. 308; Pub. L. 98–573, title III, § 306(c)(2)(B), Oct. 30, 1984, 98 Stat. 3011; Pub. L. 99–514, title XVIII, § 1887(a)(2), Oct. 22, 1986, 100 Stat. 2923; Pub. L. 100–418, title I, § 1631, Aug. 23, 1988, 102 Stat. 1264; Pub. L. 103–465, title I, §§ 127(f), 128, Dec. 8, 1994, 108 Stat. 4836; Pub. L. 107–210, div. B, title XXI, § 2110(a)(5), Aug. 6, 2002, 116 Stat. 1020; Pub. L. 108–429, title II, § 2004(i)(1), (2), Dec. 3, 2004, 118 Stat. 2594, 2595; Pub. L. 109–280, title XIV, § 1635(f)(2), Aug. 17, 2006, 120 Stat. 1171.)

REFERENCES IN TEXT

Reorganization Plan Number 3 of 1979, referred to in subsec. (a)(1)(C), is set out as a note under section 2171 of this title.

Executive Order Numbered 12188, referred to in subsec. (a)(1)(C), is set out as a note under section 2171 of this title.

The Federal Advisory Committee Act, referred to in subsec (f), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as

amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Food and Agriculture Act of 1977, referred to in subsec. (*l*), is Pub. L. 95–113, Sept. 29, 1977, 91 Stat. 913, as amended. Title XVIII of the Act is classified generally to chapter 55A (§ 2281 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 1281 of Title 7 and Tables.

AMENDMENTS

2006—Subsec. (f)(2)(B). Pub. L. 109–280 substituted ''its establishment'' for ''their establishment''.

2004—Subsec. (b)(1). Pub. L. 108–429, § 2004(i)(2), substituted ''4 years or until the committee is scheduled to expire'' for ''2 years''.

Subsec. (f)(2). Pub. L. 108–429, § 2004(i)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''to all other advisory committees which may be established under subsection (c) of this section; except that the meetings of advisory committees established under subsections (b) and (c) of this section shall be exempt from the requirements of subsections (a) and (b) of sections 10 and 11 of the Federal Advisory Committee Act (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or his designee that such meetings will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to matters referred to in subsection (a) of this section, and that meetings may be called of such special task forces, plenary meetings of chairmen, or other such groups made up of members of the committees established under subsections (b) and (c) of this section.''

2002—Subsec. (a)(1)(A). Pub. L. 107–210, § 2110(a)(5)(A), substituted ''section 3803 of this title'' for ''section 2902 of this title''.

Subsec. (e)(1). Pub. L. 107–210, § 2110(a)(5)(B), substituted ''section 3803 of this title'' for ''section 2902 of this title'' in two places and ''section 3805(a)(1)(A) of this title'' for ''section 2903(a)(1)(A) of this title''.

Subsec. (e)(2). Pub. L. 107–210, § 2110(a)(5)(C), substituted ''section 3802 of this title'' for ''section 2901 of this title''.

1994—Subsec. (a)(1)(B). Pub. L. 103–465, § 127(f), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the operation of any trade agreement once entered into; and''.

Subsec. (b)(1). Pub. L. 103–465, § 128, inserted ''nongovernmental environmental and conservation organizations,'' after ''retailers,''.

1988—Pub. L. 100–418 amended section generally, substituting present provisions for provisions which, in the following subsections, had related to: subsec. (a), information and advice on trade agreements and other matters; subsec. (b), Advisory Committee for Trade Negotiations; subsec. (c), general policy, sectoral, functional, or policy advisory committees; subsec. (d), policy advice, technical advice and information, and other advice; subsec. (e), meeting of advisory committees at conclusion of negotiations for trade agreements; subsec. (f), Federal Advisory Committee Act; subsec. (g), trade secrets and confidential commercial, financial, or other information; subsec. (h), staff, information, personnel, and administrative services and assistance to advisory committees; subsec. (i), consultation with advisory committees; adoption of procedures; nonacceptance of committee advice or recommendations; subsec. (j), private or non-Federal government organizations or groups; subsec. (k), direct participation in negotiations by private individuals not authorized; information, consultation, participation of committee members and appropriate parties in international meetings; restrictions; subsec. (*l*), advisory committees established by Department of Agriculture; and subsec. (m), definition of ''non-Federal government''.

1986—Subsecs. (m), (n). Pub. L. 99–514 redesignated subsec. (n) as (m).

1984—Subsec. (a). Pub. L. 98–573, § 306(c)(2)(B)(i), inserted ''and the non-Federal governmental sector'' after ''private sector''.

Subsec. (c)(3). Pub. L. 98–573, § 306(c)(2)(B)(ii), added par. (3).

Subsec. (g)(1)(A), (B). Pub. L. 98–573, § 306(c)(2)(B)(iii), inserted ''or non-Federal government'' after ''private''.

Subsec. (j). Pub. L. 98–573, § 306(c)(2)(B)(iii), (iv), inserted ''or non-Federal government'' after ''private'' and ''government,'' before ''labor, industry''.

Subsec. (n). Pub. L. 98–573, § 306(c)(2)(B)(v), added subsec. (n).

1979—Subsec. (a). Pub. L. 96–39, § 1103(1), (2), struck out '', in accordance with the provisions of this section,'' after ''President'' and required the seeking of information and advice respecting operation of a trade agreement once entered into and respecting other matters arising in connection with the administration of trade policy of the United States.

Subsec. (b)(1). Pub. L. 96–39, § 1103(3), substituted ''matters referred to in subsection (a) of this section'' for ''any trade agreement referred to in section 2111 or 2112 of this title''.

Subsec. (b)(2). Pub. L. 96–39, § 1103(4), substituted requirement that the members elect the Chairman of the Committee from among its membership for provision designating the Special Representative as Chairman and struck out provision for termination of the Committee upon submission of its report to Congress as soon as practical after the end of the period which ends 5 years after Jan. 3, 1975.

Subsec. (c)(1). Pub. L. 96–39, § 1103(5), inserted a comma after ''initiative'', included references to ''services'', and substituted ''general policy advice on matters referred to in subsection (a) of this section'' for ''general policy advice on any trade agreement referred to in section 2111 or 2112 of this title'', ''Special Representative for Trade Negotiations'' for ''President acting through the Special Representative for Trade Negotiations'' and ''or Agriculture'' for ''and Agriculture''.

Subsec. (c)(2). Pub. L. 96–39, § 1103(6)–(9), substituted ''The President shall establish such sectoral or functional advisory committees as may be appropriate'' for ''The President shall, on his own initiative or at the request of organizations in a particular sector, establish such industry, labor, or agricultural sector advisory committees as he determines to be necessary for any trade negotiations referred to in section 2111 or 2112 of this title'' and ''Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned'' for ''Such committees shall, so far as practicable, be representative of all industry, labor, or agricultural interests including small business interests in the sector concerned'' and ''the Special Representative for Trade Negotiations'' for ''the President, acting through the Special Representative for Trade Negotiations'', struck out ''product sector'' before ''advisory committees'', and inserted '', in the case of each sectoral committee,'' before ''the product lines''.

Subsec. (d). Pub. L. 96–39, § 1103(10), required committee meetings to be also summoned at joint instance of Secretary of Agriculture, Commerce, or Labor, as appropriate, previously required to be called before and during trade negotiations, struck out item (1) through (3) designation for ''policy advice'', ''technical advice'' and ''advice on other factors'', struck out ''on negotiations'' and ''on negotiations on particular products both domestic and foreign'' after ''policy advice'' and ''technical advice and information'' and substituted ''factors relevant to the matters referred to in subsection (a) of this section'' for ''factors relevant to positions of the United States in trade negotiations.''

Subsec. (e). Pub. L. 96–39, § 1103(11)–(14), redesignated par. (1) as entire provision, and in provision as so redesignated, substituted ''each sector or functional advisory committee, if the sector or area'' for ''each sector advisory committee, if the sector'', ''appropriate sector or functional area'' for ''appropriate sector'', and

''within the sector or within the functional area'' for ''within the sector'', and struck out par. (2) which required a report to Congress by the Advisory Committee for Trade Negotiations by each policy advisory committee, and, each sector advisory committee as soon as practicable at end of the period ending 5 years after Jan. 3, 1975, including advisory opinions of the respective committees as to how the trade agreements serve the economic interests of United States and how provision is made for equity and reciprocity within the sector.

Subsec. (f)(2). Pub. L. 96–39, §1103(15)(A), (B), substituted ''committees'' for ''groups'' and ''with respect to matters referred to in subsection (a) of this section'' for ''on the negotiation of any trade agreement''.

Subsec. (g). Pub. L. 96–39, §1103(16), (17)(A), (B), substituted in par. (1)(A) ''matters referred to in subsection (a) of this section'' for ''a trade agreement referred to in section 2111 or 2112 of this title'', in par. (1)(B) ''matters referred to in subsection (a) of this section'' for ''trade negotiations'', and in par. (2) ''matters referred to in subsection (a) of this title'' for ''proposed trade agreements''.

Subsec. (i). Pub. L. 96–39, §1103(18)(A)–(C), struck out in provision before cl. (1) '', both during preparation for negotiations and actual negotiations'' after ''basis'' and in cl. (1) ''arising in preparation for or in the course of such negotiations'' after ''developments'' and substituted in cl. (2) ''with respect to matters referred to in subsection (a) of this section'' for ''to the negotiations''.

Subsec. (j). Pub. L. 96–39, §1103(19), substituted ''matters referred to in subsection (a) of this section'' for ''trade agreement referred to in section 2111 or 2112 of this title''.

Subsec. (k). Pub. L. 96–39, §1103(19), (20), substituted ''matters referred to in subsection (a) of this section'' for ''trade agreement referred to in section 2111 or 2112 of this title'' and provided for information to and consultations with committee members and appropriate parties and participation in international meetings without becoming spokesmen or negotiators for the United States.

Subsec. (*l*). Pub. L. 96–39, §1103(21), added subsec. (*l*).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Aug. 17, 2006, see section 1641 of Pub. L. 109–280, set out as a note under section 58c of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–429, title II, §2004(i)(3), Dec. 3, 2004, 118 Stat. 2595, provided that: ''The amendments made by this subsection [amending this section] shall take effect on February 1, 2006.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 130 of Pub. L. 103–465, set out as an Effective Date note under section 3531 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective July 26, 1979, see section 1114 of Pub. L. 96–39, set out as an Effective Date note under section 2581 of this title.

DELEGATION OF AUTHORITY

For delegation of functions of President under div. B of Pub. L. 107–210, amending this section, see section 1 of Ex. Ord. No. 13277, Nov. 19, 2002, 67 F.R. 70305, set out as a note under section 3801 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1801–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

EX. ORD. NO. 12905. TRADE AND ENVIRONMENT POLICY ADVISORY COMMITTEE

Ex. Ord. No. 12905, Mar. 25, 1994, 59 F.R. 14733, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and section 135(c)(1) of the Trade Act of 1974, as amended (19 U.S.C. 2155(c)(1)) (''Act''), it is hereby ordered as follows:

SECTION 1. *Establishment*. There is established in the Office of the United States Trade Representative (''Trade Representative''[)] the ''Trade and Environment Policy Advisory Committee'' (''Committee'').

SEC. 2. *Membership*. (a) The Committee shall consist of not more than 35 members, including, but not limited to, representatives from environmental interest groups, industry (including the environmental technology and environmental services industries), agriculture, services, non-Federal government, and consumer interests. The Committee should be broadly representative of the key sectors and groups of the economy with an interest in trade and environmental policy issues.

(b) The Chairman of the Committee shall be elected by the Committee from among its members. Members of the Committee shall be appointed by the Trade Representative, in consultation with the Cabinet secretaries described in section 2155(c)(1) of title 19, United States Code, for a term of 2 years and may be reappointed for any number of terms. Appointments to the Committee shall be made without regard to political affiliation. Any member may be removed at the discretion of the Trade Representative.

SEC. 3. *Functions*. (a) The Committee shall provide the Trade Representative with policy advice on issues involving trade and the environment.

(b) The Committee shall submit a report to the President, to the Congress, and to the Trade Representative at the conclusion of negotiations for each trade agreement referred to in section 102 of the Act [19 U.S.C. 2112]. The report shall include an advisory opinion on whether and to what extent the agreement promotes the interests of the United States.

(c) The Committee may establish such subcommittees of its members as it deems necessary, subject to the provisions of the Federal Advisory Committee Act and the approval of the Trade Representative, or his designee.

(d) The Committee shall report its activities to the Trade Representative, or his designee.

SEC. 4. *Administration*. (a) The Trade Representative, or his designee, with the advice of the Chairman, shall be responsible for prior approval of the agendas for all Committee meetings.

(b) The Trade Representative, or his designee, shall be responsible for determinations, filings, and other administrative requirements of the Federal Advisory Committee Act.

(c)(1) The Trade Representative shall provide funding and administrative and staff support for the Committee.

(2) The Committee shall have an Executive Director who shall be a Federal officer or employee designated by the Trade Representative.

(d) Members of the Committee shall serve without either compensation or reimbursement of expenses.

(e) The Committee shall meet as needed at the call of the Trade Representative or his designee, depending on various factors such as the level of activity of trade negotiations and the needs of the Trade Representative, or at the call of two-thirds of the members of the Committee.

SEC. 5. *General.* The Committee shall function for such period as may be necessary. In accordance with the Federal Advisory Committee Act [5 U.S.C. App.], the Committee shall terminate after 2 years from the date of this order unless otherwise extended.

WILLIAM J. CLINTON.

EXTENSION OF TERM OF TRADE AND ENVIRONMENT POLICY ADVISORY COMMITTEE

Term of Trade and Environment Policy Advisory Committee extended until Sept. 30, 1997, by Ex. Ord. No. 12974, Sept. 29, 1995, 60 F.R. 51875, formerly set out under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of Trade and Environment Policy Advisory Committee extended until Sept. 30, 1999, by Ex. Ord. No. 13062, §1(*o*), Sept. 29, 1997, 62 F.R. 51755, formerly set out under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of Trade and Environment Policy Advisory Committee extended until Sept. 30, 2001, by Ex. Ord. No. 13138, Sept. 30, 1999, 64 F.R. 53879, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of Trade and Environment Policy Advisory Committee extended until Sept. 30, 2003, by Ex. Ord. No. 13225, Sept. 28, 2001, 66 F.R. 50291, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of Trade and Environment Policy Advisory Committee extended until Sept. 30, 2005, by Ex. Ord. No. 13316, Sept. 17, 2003, 68 F.R. 55255, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of Trade and Environment Policy Advisory Committee extended until Sept. 30, 2007, by Ex. Ord. No. 13385, Sept. 29, 2005, 70 F.R. 57989, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of Trade and Environment Policy Advisory Committee extended until Sept. 30, 2009, by Ex. Ord. No. 13446, Sept. 28, 2007, 72 F.R. 56175, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

PART 4—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

AMENDMENTS

1983—Pub. L. 97–456, §3(d)(3), Jan. 12, 1983, 96 Stat. 2505, substituted ''United States Trade Representative'' for ''Special Representative for Trade Negotiations'' in part 4 heading.

§ 2171. Structure, functions, powers, and personnel

(a) Establishment within Executive Office of the President

There is established within the Executive Office of the President the Office of the United States Trade Representative (hereinafter in this section referred to as the ''Office'').

(b) United States Trade Representative; Deputy United States Trade Representatives

(1) The Office shall be headed by the United States Trade Representative who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of the United States Trade Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. The United States Trade Representative shall hold office at the pleasure of the President, shall be entitled to receive the same allowances as a chief of mission, and shall have the rank of Ambassador Extraordinary and Plenipotentiary.

(2) There shall be in the Office three Deputy United States Trade Representatives and one Chief Agricultural Negotiator who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of a Deputy United States Trade Representative or the Chief Agricultural Negotiator submitted to the Senate for its advice and consent, and referred to a committee, shall be referred to the Committee on Finance. Each Deputy United States Trade Representative and the Chief Agricultural Negotiator shall hold office at the pleasure of the President and shall have the rank of Ambassador.

(3) A person who has directly represented, aided, or advised a foreign entity (as defined by section 207(f)(3) of title 18) in any trade negotiation, or trade dispute, with the United States may not be appointed as United States Trade Representative or as a Deputy United States Trade Representative.

(c) Duties of United States Trade Representative and Deputy United States Trade Representatives

(1) The United States Trade Representative shall—

(A) have primary responsibility for developing, and for coordinating the implementation of, United States international trade policy, including commodity matters, and, to the extent they are related to international trade policy, direct investment matters;

(B) serve as the principal advisor to the President on international trade policy and shall advise the President on the impact of other policies of the United States Government on international trade;

(C) have lead responsibility for the conduct of, and shall be the chief representative of the United States for, international trade negotiations, including all negotiations on any matter considered under the auspices of the World Trade Organization, commodity and direct investment negotiations, in which the United States participates;

(D) issue and coordinate policy guidance to departments and agencies on basic issues of policy and interpretation arising in the exercise of international trade functions, including any matter considered under the auspices of the World Trade Organization, to the extent necessary to assure the coordination of international trade policy and consistent with any other law;

(E) act as the principal spokesman of the President on international trade;

(F) report directly to the President and the Congress regarding, and be responsible to the President and the Congress for the administration of, trade agreements programs;

(G) advise the President and Congress with respect to nontariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements programs;

(H) be responsible for making reports to Congress with respect to matters referred to in subparagraphs (C) and (F);

(I) be chairman of the interagency trade organization established under section 1872(a) of this title, and shall consult with and be advised by such organization in the performance of his functions; and

(J) in addition to those functions that are delegated to the United States Trade Representative as of August 23, 1988, be responsible for such other functions as the President may direct.

(2) It is the sense of Congress that the United States Trade Representative should—

(A) be the senior representative on any body that the President may establish for the purpose of providing to the President advice on overall economic policies in which international trade matters predominate; and

(B) be included as a participant in all economic summit and other international meetings at which international trade is a major topic.

(3) The United States Trade Representative may—

(A) delegate any of his functions, powers, and duties to such officers and employees of the Office as he may designate; and

(B) authorize such successive redelegations of such functions, powers, and duties to such officers and employees of the Office as he may deem appropriate.

(4) Each Deputy United States Trade Representative shall have as his principal function the conduct of trade negotiations under this chapter and shall have such other functions as the United States Trade Representative may direct.

(5) The principal function of the Chief Agricultural Negotiator shall be to conduct trade negotiations and to enforce trade agreements relating to United States agricultural products and services. The Chief Agricultural Negotiator shall be a vigorous advocate on behalf of United States agricultural interests. The Chief Agricultural Negotiator shall perform such other functions as the United States Trade Representative may direct.

(d) Unfair trade practices; additional duties of Representative; advisory committee; definition

(1) In carrying out subsection (c) of this section with respect to unfair trade practices, the United States Trade Representative shall—

(A) coordinate the application of interagency resources to specific unfair trade practice cases;

(B) identify, and refer to the appropriate Federal department or agency for consideration with respect to action, each act, policy, or practice referred to in the report required under section 2241(b) of this title, or otherwise known to the United States Trade Representative on the basis of other available information, that may be an unfair trade practice that either—

(i) is considered to be inconsistent with the provisions of any trade agreement and has a significant adverse impact on United States commerce, or

(ii) has a significant adverse impact on domestic firms or industries that are either too small or financially weak to initiate proceedings under the trade laws;

(C) identify practices having a significant adverse impact on United States commerce that the attainment of United States negotiating objectives would eliminate; and

(D) identify, on a biennial basis, those United States Government policies and practices that, if engaged in by a foreign government, might constitute unfair trade practices under United States law.

(2) For purposes of carrying out paragraph (1), the United States Trade Representative shall be assisted by an interagency unfair trade practices advisory committee composed of the Trade Representative, who shall chair the committee, and senior representatives of the following agencies, appointed by the respective heads of those agencies:

(A) The Bureau of Economics and Business Affairs of the Department of State.

(B) The United States and Foreign Commercial Services of the Department of Commerce.

(C) The International Trade Administration (other than the United States and Foreign Commercial Service) of the Department of Commerce.

(D) The Foreign Agricultural Service of the Department of Agriculture.

The United States Trade Representative may also request the advice of the United States International Trade Commission regarding the carrying out of paragraph (1).

(3) For purposes of this subsection, the term ''unfair trade practice'' means any act, policy, or practice that—

(A) may be a subsidy with respect to which countervailing duties may be imposed under subtitle A of title VII [19 U.S.C. 1671 et seq.];

(B) may result in the sale or likely sale of foreign merchandise with respect to which antidumping duties may be imposed under subtitle B of title VII [19 U.S.C. 1673 et seq.];

(C) may be either an unfair method of competition, or an unfair act in the importation of articles into the United States, that is unlawful under section 337 [19 U.S.C. 1337]; or

(D) may be an act, policy, or practice of a kind with respect to which action may be taken under subchapter III of this chapter.

(e) Powers of United States Trade Representative

The United States Trade Representative may, for the purpose of carrying out his functions under this section—

(1) subject to the civil service and classification laws, select, appoint, employ, and fix the compensation of such officers and employees as are necessary and prescribe their authority and duties, except that not more than 20 individuals may be employed without regard to any provision of law regulating the employment or compensation at rates not to exceed the rate of pay for level IV of the Executive Schedule in section 5314[1] of title 5;

[1] So in original. Probably should be section ''5315''.

(2) employ experts and consultants in accordance with section 3109 of title 5 and compensate individuals so employed for each day (including traveltime) at rates not in excess of the maximum rate of pay for grade GS–18 as provided in section 5332 of title 5 and while such experts and consultants are so serving away from their homes or regular place of business, to pay such employees travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5 for persons in Government service employed intermittently;

(3) promulgate such rules and regulations as may be necessary to carry out the functions, powers and duties vested in him;

(4) utilize, with their consent, the services, personnel, and facilities of other Federal agencies;

(5) enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the work of the Office and on such terms as the United States Trade Representative may deem appropriate, with any agency or instrumentality of the United States, or with any public or private person, firm, association, corporation, or institution;

(6) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31;

(7) adopt an official seal, which shall be judicially noticed;

(8) pay for expenses approved by him for official travel without regard to the Federal Travel Regulations or to the provisions of subchapter I of chapter 57 of title 5 (relating to rates of per diem allowances in lieu of subsistence expenses);

(9) accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Office;

(10) acquire, by purchase or exchange, not more than two passenger motor vehicles for use abroad, except that no vehicle may be acquired at a cost exceeding $9,500; and

(11) provide, where authorized by law, copies of documents to persons at cost, except that any funds so received shall be credited to, and be available for use from, the account from which expenditures relating thereto were made.

(f) Use of other Federal agencies

The United States Trade Representative shall, to the extent he deems it necessary for the proper administration and execution of the trade agreements programs of the United States, draw upon the resources of, and consult with, Federal agencies in connection with the performance of his functions.

(g) Authorization of appropriations

(1)(A) There are authorized to be appropriated to the Office for the purposes of carrying out its functions the following:

(i) $32,300,000 for fiscal year 2003.

(ii) $33,108,000 for fiscal year 2004.

(B) Of the amounts authorized to be appropriated under subparagraph (A) for any fiscal year—

(i) not to exceed $98,000 may be used for entertainment and representation expenses of the Office; and

(ii) not to exceed $1,000,000 shall remain available until expended.

(2) For the fiscal year beginning October 1, 1982, and for each fiscal year thereafter, there are authorized to be appropriated to the Office for the salaries of its officers and employees such additional sums as may be provided by law to reflect pay rate changes made in accordance with the Federal Pay Comparability Act of 1970.

(3) By not later than the date on which the President submits to Congress the budget of the United States Government for a fiscal year, the United States Trade Representative shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the Office to carry out its functions.

(Pub. L. 93–618, title I, §141, Jan. 3, 1975, 88 Stat. 1999; Pub. L. 97–456, §3(a)–(d)(2), Jan. 12, 1983, 96 Stat. 2504, 2505; Pub. L. 98–573, title III, §304(d)(2)(A), title VII, §703, Oct. 30, 1984, 98 Stat. 3004, 3043; Pub. L. 99–272, title XIII, §13023, Apr. 7, 1986, 100 Stat. 307; Pub. L. 99–514, title XVIII, §1887(a)(3), (4), Oct. 22, 1986, 100 Stat. 2923; Pub. L. 100–203, title IX, §9504, Dec. 22, 1987, 101 Stat. 1330–382; Pub. L. 100–418, title I, §1601, Aug. 23, 1988, 102 Stat. 1260; Pub. L. 101–207, §1(a), Dec. 7, 1989, 103 Stat. 1833; Pub. L. 101–382, title I, §103(a), Aug. 20, 1990, 104 Stat. 634; Pub. L. 103–465, title VI, §621(a)(8), Dec. 8, 1994, 108 Stat. 4993; Pub. L. 104–65, §21(b), Dec. 19, 1995, 109 Stat. 704; Pub. L. 104–295, §20(f)(1), Oct. 11, 1996, 110 Stat. 3529; Pub. L. 106–36, title I, §1001(a)(2), June 25, 1999, 113 Stat. 130; Pub. L. 106–200, title IV, §406, May 18, 2000, 114 Stat. 293; Pub. L. 107–210, div. A, title III, §361(a), (b), Aug. 6, 2002, 116 Stat. 991; Pub. L. 108–429, title II, §2004(a)(15), Dec. 3, 2004, 118 Stat. 2591.)

REFERENCES IN TEXT

Subtitles A and B of title VII and section 337, referred to in subsec. (d)(3)(A) to (C), probably mean subtitles A and B of title VII and section 337 of the Tariff Act of 1930 which is act June 17, 1930, ch. 497, 46 Stat. 590, as amended. Subtitles A and B of title VII of the Tariff Act of 1930 are classified generally to parts I and II (§1671 et seq. and 1673 et seq., respectively) of subtitle IV of chapter 4 of this title. Section 337 of the Tariff Act of 1930 is classified to section 1337 of this title. For complete classification of this Act to the Code, see section 1654 of this title and Tables.

Subchapter III of this chapter, referred to in subsec. (d)(3)(D), was in the original ''title III of the Trade Act of 1974'', which is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended. Chapter 1 of title III of the Trade Act of 1974 is classified generally to subchapter III (§2411 et seq.) of this chapter. For complete classification of title III to the Code, see Tables.

The civil service laws, referred to in subsec. (e)(1), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The classification laws, referred to in subsec. (e)(1), are set forth in chapter 51 (§5101 et seq.) and subchapter III (§5331 et seq.) of chapter 53 of Title 5.

The Federal Pay Comparability Act of 1970, referred to in subsec. (g)(2), is Pub. L. 91–656, Jan. 8, 1971, 84 Stat. 1946, as amended, which enacted sections 5305 to

5308 and 5947 of Title 5, amended sections 5108, 5301, and 5942 of Title 5 and section 410 of Title 39, Postal Service, repealed section 5302 of Title 5, and enacted provisions set out as notes under sections 5303 and 5942 of Title 5, section 60a of Title 2, The Congress, and section 410 of Title 39. For complete classification of the Act to the Code see Short Title note set out under section 5301 of Title 5 and Tables.

CODIFICATION

Section is comprised of section 141 of Pub. L. 93–618. Section 141(b) of Pub. L. 93–618 contains two pars. (3), the first of which amended sections 5312 and 5314 of Title 5, Government Organization and Employees.

AMENDMENTS

2004—Subsec. (b)(2). Pub. L. 108–429 realigned margins.

2002—Subsec. (g)(1)(A). Pub. L. 107–210, § 361(a)(1)(A), struck out ''not to exceed'' after ''functions'' in introductory provisions.

Subsec. (g)(1)(A)(i). Pub. L. 107–210, § 361(a)(1)(B), added cl. (i) and struck out former cl. (i) which read as follows: ''$23,250,000 for fiscal year 1991.''

Subsec. (g)(1)(A)(ii). Pub. L. 107–210, § 361(a)(1)(C), added cl. (ii) and struck out former cl. (ii) which read as follows: ''$21,077,000 for fiscal year 1992.''

Subsec. (g)(1)(B). Pub. L. 107–210, § 361(a)(2), inserted ''and'' at end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: ''not to exceed $2,050,000 may be used to pay the United States share of the expenses of binational panels and extraordinary challenge committees convened pursuant to chapter 19 of the United States-Canada Free-Trade Agreement; and''.

Subsec. (g)(3). Pub. L. 107–210, § 361(b), added par. (3).

2000—Subsec. (b)(2). Pub. L. 106–200, § 406(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''There shall be in the Office three Deputy United States Trade Representatives who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of a Deputy United States Trade Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. Each Deputy United States Trade Representative shall hold office at the pleasure of the President and shall have the rank of Ambassador.''

Subsec. (c)(5). Pub. L. 106–200, § 406(2), added par. (5).

1999—Subsec. (b)(3). Pub. L. 106–36 struck out ''LIMITATION ON APPOINTMENTS.—'' after ''(3)'' and realigned margins.

1996—Subsec. (c)(1)(D). Pub. L. 104–295 struck out comma after ''World Trade Organization,''.

1995—Subsec. (b)(3). Pub. L. 104–65 added par. (3).

1994—Subsec. (c)(1)(C). Pub. L. 103–465, § 621(a)(8)(A), inserted ''all negotiations on any matter considered under the auspices of the World Trade Organization,'' after ''including''.

Subsec. (c)(1)(D). Pub. L. 103–465, § 621(a)(8)(B), inserted '', including any matter considered under the auspices of the World Trade Organization,'' after ''functions''.

1990—Subsec. (g)(1). Pub. L. 101–382 amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''(A) There are authorized to be appropriated for fiscal year 1990 to the Office for the purposes of carrying out its functions not to exceed $19,651,000.

''(B) Of the amounts authorized to be appropriated under subparagraph (A) for fiscal year 1990—

''(i) not to exceed $89,000 may be used for entertainment and representation expenses of the Office; and

''(ii) not to exceed $1,000,000 shall remain available until expended.''

1989—Subsec. (g)(1). Pub. L. 101–207, in subpar. (A), substituted ''1990'' for ''1988'' and ''$19,651,000'' for ''$15,172,000'', and in subpar. (B), substituted ''1990'' for ''1988'' in introductory provisions, and ''$89,000'' for ''$69,000'' in cl. (i).

1988—Subsec. (c)(1). Pub. L. 100–418, § 1601(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The United States Trade Representative shall—

''(A) be the chief representative of the United States for each trade negotiation under this subchapter or section 2411 of this title;

''(B) report directly to the President and the Congress, and be responsible to the President and the Congress for the administration of trade agreements programs under this chapter, the Trade Expansion Act of 1962 [19 U.S.C. 1801 et seq.], and section 1351 of this title;

''(C) advise the President and Congress with respect to nontariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements programs;

''(D) be responsible for making reports to Congress with respect to the matter set forth in subparagraphs (A) and (B);

''(E) be chairman of the interagency trade organization established pursuant to section 242(a) of the Trade Expansion Act of 1962 [19 U.S.C. 1872(a)]; and

''(F) be responsible for such other functions as the President may direct.''

Subsec. (c)(2) to (4). Pub. L. 100–418, § 1601(a)(2), (3), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsecs. (d) to (g). Pub. L. 100–418, § 1601(b)(1), (2), added subsec. (d) and redesignated former subsecs. (d) to (f) as (e) to (g), respectively.

1987—Subsec. (f)(1). Pub. L. 100–203 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''There are authorized to be appropriated to the Office for the purpose of carrying out its functions $13,582,000 for fiscal year 1986; of which not to exceed $80,000 may be used for entertainment and representation expenses.''

1986—Subsec. (d)(1). Pub. L. 99–272, § 13023(1), inserted provision that not more than 20 individuals may be employed without regard to any provision of law regulating the employment or compensation at rates not to exceed the rate of pay for level IV of the Executive Schedule.

Subsec. (d)(6). Pub. L. 99–514, § 1887(a)(3), substituted ''1342 of title 31'' for ''3679(b) of the Revised Statutes (31 U.S.C. 665(b))''.

Subsec. (d)(8), (11). Pub. L. 99–514, § 1887(a)(4), redesignated the par. (8) relating to the provision of copies of documents to persons at cost as par. (11).

Subsec. (f)(1). Pub. L. 99–272, § 13023(2), substituted ''$13,582,000 for fiscal year 1986'' for ''$14,179,000 for fiscal year 1985''.

1984—Subsec. (d)(6) to (8). Pub. L. 98–573, § 304(d)(2)(A), which directed that a new par. (8), relating to the provision of copies of documents to persons at cost, be added to subsec. (d) by striking out ''and'' at the end of par. (6), substituting ''; and'' for the period at the end of par. (7), and adding the new par. (8) at the end thereof, was executed by adding the new par. (8) following par. (10). Amendments to pars. (6) and (7) could not be executed.

Subsec. (f)(1). Pub. L. 98–573, § 703, substituted provisions authorizing appropriations of $14,179,000 for fiscal year 1985, of which not more than $80,000 may be used for entertainment and representation for provisions authorizing appropriations of $11,100,000 for fiscal year 1983, of which not more than $65,000 could be used for entertainment and representation expenses.

1983—Subsec. (a). Pub. L. 97–456, § 3(d)(1)(D), substituted ''United States Trade Representative'' for ''Special Representative for Trade Negotiations''.

Subsec. (b)(1). Pub. L. 97–456, § 3(d)(1)(D), substituted ''United States Trade Representative'' for ''Special Representative for Trade Negotiations'' wherever appearing.

Subsec. (b)(2). Pub. L. 97–456, § 3(c), (d)(2)(A), (B), substituted ''three Deputy United States Trade Representatives'' for ''two Deputy Special Representatives for Trade Negotiations'' after ''in the Office'', ''a Deputy

United States Trade Representative'' for ''a Deputy Special Representative'' after ''any nomination of a'', and ''Deputy United States Trade Representative'' for ''Deputy Special Representative for Trade Negotiations'' after ''Each''.

Subsec. (c)(1). Pub. L. 97–456, §3(d)(1)(D), substituted ''United States Trade Representative'' for ''Special Representative for Trade Negotiations'' in provisions preceding subpar. (A).

Subsec. (c)(2). Pub. L. 97–456, §3(b)(1), added par. (2). Former par. (2) redesignated (3).

Subsec. (c)(3). Pub. L. 97–456, §3(b)(1), (d)(2)(C), (D), redesignated former par. (2) as (3) and substituted ''Deputy United States Trade Representative'' for ''Deputy Special Representative for Trade Negotiations'' after ''Each'' and ''United States Trade Representative'' for ''Special Representative for Trade Negotiations'' after ''such other functions as the''.

Subsec. (d). Pub. L. 97–456, §3(d)(1)(D), substituted ''United States Trade Representative'' for ''Special Representative for Trade Negotiations'' in provisions preceding par. (1).

Subsec. (d)(3). Pub. L. 97–456, §3(b)(2), inserted '', powers and duties'' after ''functions''.

Subsec. (d)(5). Pub. L. 97–456, §3(d)(1)(D), substituted ''United States Trade Representative'' for ''Special Representative for Trade Negotiations''.

Subsec. (d)(8) to (10). Pub. L. 97–456, §3(b)(3)–(5), added pars. (8) to (10).

Subsec. (e). Pub. L. 97–456, §3(d)(1)(D), substituted ''United States Trade Representative'' for ''Special Representative for Trade Negotiations''.

Subsec. (f). Pub. L. 97–456, §3(a), substituted provisions authorizing for appropriation $11,100,000 for fiscal 1983, of which no more than $65,000 could be used for entertainment and representation expenses, and authorizing for appropriation such additional sums as might be provided in accordance with the Federal Pay Comparability Act of 1970, for provisions authorizing for appropriation necessary sums for fiscal 1976 and each fiscal year thereafter any part of which was within the five-year period beginning on Jan. 3, 1975.

Subsec. (g). Pub. L. 97–456, §3(d)(1), struck out subsec. (g) which abolished the Office of Special Representative for Trade Negotiations and transferred its assets and obligations to the Office of United States Trade Representative.

Subsec. (h). Pub. L. 97–456, §3(d)(1), struck out subsec. (h) which permitted any individual holding the position of Special Representative for Trade Negotiations or Deputy Special Representative for Trade Negotiations on Jan. 3, 1975, appointed with the advice and consent of the Senate, to continue to hold such position, and provided for the transfer of personnel employed by the Office of Special Representative for Trade Negotiations on Jan. 2, 1975, to the Office of United States Trade Representative.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under part 2 or 3 of subchapter II of this chapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–65 applicable with respect to an individual appointed as United States Trade Representative or as a Deputy United States Trade Representative on or after Dec. 19, 1995, see section 21(c) of Pub. L. 104–65, set out as a note under section 207 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 621(b) of Pub. L. 103–465, set out as a note under section 1677k of this title.

CHIEF NEGOTIATOR FOR INTELLECTUAL PROPERTY ENFORCEMENT

Pub. L. 108–447, div. B, title II, Dec. 8, 2004, 118 Stat. 2872, provided in part: ''That there is established a position of Chief Negotiator for Intellectual Property Enforcement.''

WAIVER OF PROVISIONS LIMITING APPOINTMENT OF TRADE REPRESENTATIVE

Pub. L. 105–5, Mar. 17, 1997, 111 Stat. 11, provided: ''That notwithstanding the provisions of paragraph (3) of section 141(b) of the Trade Act of 1974 (19 U.S.C. 2171(b)(3)) or any other provision of law, the President, acting by and with the advice and consent of the Senate, is authorized to appoint Charlene Barshefsky as the United States Trade Representative.''

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

SENIOR COMMERCIAL OFFICERS TO HOLD TITLE OF MINISTER-COUNSELOR; MAXIMUM NUMBER DESIGNATED

Provisions requiring the Secretary of State, upon the request of the Secretary of Commerce, to accord the diplomatic title of Minister-Counselor to the senior Commercial Officer assigned to any United States mission abroad with a limit on the number of Commercial Service officers accorded such diplomatic title at any time were contained in the following appropriation acts:

Pub. L. 102–395, title II, Oct. 6, 1992, 106 Stat. 1852.
Pub. L. 102–140, title II, Oct. 28, 1991, 105 Stat. 802.
Pub. L. 101–515, title I, Nov. 5, 1990, 104 Stat. 2103.
Pub. L. 101–162, title I, Nov. 21, 1989, 103 Stat. 991.
Pub. L. 100–459, title I, Oct. 1, 1988, 102 Stat. 2189.
Pub. L. 100–202, §101(a) [title I], Dec. 22, 1987, 101 Stat. 1329, 1329–3.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1801–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

REORGANIZATION PLAN NO. 3 OF 1979

44 F.R. 69273, 93 Stat. 1381, as amended Pub. L. 97–195, §1(c)(6), June 16, 1982, 96 Stat. 115; Pub. L. 97–377, title I, §122, Dec. 21, 1982, 96 Stat. 1913

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, September 25, 1979, pursuant to the provisions of chapter 9 of title 5 of the United States Code.

REORGANIZATION OF FUNCTIONS RELATING TO INTERNATIONAL TRADE

SECTION 1. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

(a) The Office of the Special Representative for Trade Negotiations is redesignated the Office of the United States Trade Representative.

(b)(1) The Special Representative for Trade Negotiations is redesignated the United States Trade Representative (hereinafter referred to as the ''Trade Representative''). The Trade Representative shall have pri-

mary responsibility, with the advice of the interagency organization established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872) (hereinafter referred to as the ''Committee''), for developing, and for coordinating the implementation of, United States international trade policy, including commodity matters and, to the extent they are related to international trade policy, direct investment matters. The Trade Representative shall serve as the principal advisor to the President on international trade policy and shall advise the President on the impact of other policies of the United States Government on international trade.

(2) The Trade Representative shall have lead responsibility for the conduct of international trade negotiations, including commodity and direct investment negotiations in which the United States participates.

(3) To the extent necessary to assure the coordination of international trade policy, and consistent with any other law, the Trade Representative, with the advice of the Committee, shall issue policy guidance to departments and agencies on basic issues of policy and interpretation arising in the exercise of the following international trade functions. Such guidance shall determine the policy of the United States with respect to international trade issues arising in the exercise of such functions:

(A) matters concerning the General Agreement on Tariffs and Trade, including implementation of the trade agreements set forth in section 2(c) of the Trade Agreements Act of 1979 [19 U.S.C. 2503(c)]; United States Government positions on trade and commodity matters dealt with by the Organization for Economic Cooperation and Development, the United Nations Conference on Trade and Development, and other multilateral organizations; and the assertion and protection of the rights of the United States under bilateral and multilateral international trade and commodity agreements;

(B) expansion of exports from the United States;

(C) policy research on international trade, commodity, and direct investment matters;

(D) to the extent permitted by law, overall United States policy with regard to unfair trade practices, including enforcement of countervailing duties and antidumping functions under section 303 and title VII of the Tariff Act of 1930 [19 U.S.C. 1303, 1671 et seq.];

(E) bilateral trade and commodity issues, including East-West trade matters; and

(F) international trade issues involving energy.

(4) All functions of the Trade Representative shall be conducted under the direction of the President.

(c) The Deputy Special Representatives for Trade Negotiations are redesignated Deputy United States Trade Representatives.

SEC. 2. DEPARTMENT OF COMMERCE

(a) The Secretary of Commerce (hereinafter referred to as the ''Secretary'') shall have, in addition to any other functions assigned by law, general operational responsibility for major nonagricultural international trade functions of the United States Government, including export development, commercial representation abroad, the administration of the antidumping and countervailing duty laws, export controls, trade adjustment assistance to firms and communities, research and analysis, and monitoring compliance with international trade agreements to which the United States is a party.

(b)(1) There shall be in the Department of Commerce (hereinafter referred to as the ''Department'') a Deputy Secretary appointed by the President, by and with the advice and consent of the Senate. The Deputy Secretary shall receive compensation at the rate payable for Level II of the Executive Schedule [5 U.S.C. 5315], and shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.

(2) The position of Under Secretary of Commerce established under section 1 of the Act of June 5, 1939 (ch. 180, 53 Stat. 808; 15 U.S.C. 1502) is abolished.

(c) There shall be in the Department an Under Secretary for International Trade appointed by the President, by and with the advice and consent of the Senate. The Under Secretary for International Trade shall receive compensation at the rate payable for Level III of the Executive Schedule [5 U.S.C. 5314], and shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.

(d) There shall be in the Department two additional Assistant Secretaries appointed by the President, by and with the advice and consent of the Senate. Each such Assistant Secretary shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.

(e) There shall be in the Department of Commerce a Director General of the United States and Foreign Commercial Services who shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate prescribed by law for level IV of the Executive Schedule [5 U.S.C. 5315]. [As amended Pub. L. 97–195, §1(c)(6), June 16, 1982, 96 Stat. 115; Pub. L. 97–377, title I, §122, Dec. 21, 1982, 96 Stat. 1913.]

SEC. 3. EXPORT-IMPORT BANK OF THE UNITED STATES

The Trade Representative and the Secretary shall serve, ex officio and without vote, as additional members of the Board of Directors of the Export-Import Bank of the United States.

SEC. 4. OVERSEAS PRIVATE INVESTMENT CORPORATION

(a) The Trade Representative shall serve, ex officio, as an additional voting member of the Board of Directors of the Overseas Private Investment Corporation. The Trade Representative shall be the Vice Chair of such Board.

(b) There shall be an additional member of the Board of Directors of the Overseas Private Investment Corporation who shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and who shall not be an official or employee of the Government of the United States. Such Director shall be appointed for a term of no more than three years.

SEC. 5. TRANSFER OF FUNCTIONS

(a)(1) There are transferred to the Secretary all functions of the Secretary of the Treasury, the General Counsel of the Department of the Treasury, or the Department of the Treasury pursuant to the following:

(A) section 305(b) of the Trade Agreements Act of 1979 (19 U.S.C. 2515(b)), to be exercised in consultation with the Secretary of the Treasury;

(B) section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862);

(C) section 303 and title VII (including section 771(1) [19 U.S.C. 1677(1)] of the Tariff Act of 1930 (19 U.S.C. 1303, 1671 *et seq.*), except that the Customs Service of the Department of the Treasury shall accept such deposits, bonds, or other security as deemed appropriate by the Secretary, shall assess and collect such duties as may be directed by the Secretary, and shall furnish such of its important records or copies thereof as may be requested by the Secretary incident to the functions transferred by this subparagraph;

(D) sections 514, 515, and 516 of the Tariff Act of 1930 (19 U.S.C. 1514, 1515, and 1516) insofar as they relate to any protest, petition, or notice of desire to contest described in section 1002(b)(1) of the Trade Agreements Act of 1979 [19 U.S.C. 1516a note];

(E) with respect to the functions transferred by subparagraph (C) of this paragraph, section 318 of the Tariff Act of 1930 (19 U.S.C. 1318), to be exercised in consultation with the Secretary of the Treasury;

(F) with respect to the functions transferred by subparagraph (C) of this paragraph, section 502(b) of the Tariff Act of 1930 (19 U.S.C. 1502(b)), and, insofar as it provides authority to issue regulations and disseminate information, to be exercised in consultation with the Secretary of the Treasury to the extent that the Secretary of the Treasury has responsibility

under subparagraph (C), section 502(a) of such Act (19 U.S.C. 1502(a));

(G) with respect to the functions transferred by subparagraph (C) of this paragraph, section 617 of the Tariff Act of 1930 (19 U.S.C. 1617); and

(H) section 2632(e) of title 28 of the United States Code, insofar as it relates to actions taken by the Secretary reviewable under section 516A of the Tariff Act of 1930 (19 U.S.C. 1516(a)) [19 U.S.C. 1516a].

(2) The Secretary shall consult with the Trade Representative regularly in exercising the functions transferred by subparagraph (C) of paragraph (1) of this subsection, and shall consult with the Trade Representative regarding any substantive regulation proposed to be issued to enforce such functions.

(b)(1) There are transferred to the Secretary all trade promotion and commercial functions of the Secretary of State or the Department of State that are—

(A) performed in full-time overseas trade promotion and commercial positions; or

(B) performed in such countries as the President may from time to time prescribe.

(2) To carry out the functions transferred by paragraph (1) of this subsection, the President, to the extent he deems it necessary, may authorize the Secretary to utilize Foreign Service personnel authorities and to exercise the functions vested in the Secretary of State by the Foreign Service Act of 1946 (22 U.S.C. 801 *et seq.*) [see 22 U.S.C. 3901 et seq.] and by any other laws with respect to personnel performing such functions.

(c) There are transferred to the President all functions of the East-West Foreign Trade Board under section 411(c) of the Trade Act of 1974 (19 U.S.C. 2441(c)).

(d) Appropriations available to the Department of State for Fiscal Year 1980 for representation of the United States concerning matters arising under the General Agreement on Tariffs and Trade and trade and commodity matters dealt with under the auspices of the United Nations Conference on Trade and Development are transferred to the Trade Representative.

(e) There are transferred to the interagency organization established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872) all functions of the East-West Foreign Trade Board under section 411(a) and (b) of the Trade Act of 1974 (19 U.S.C. 2441(a) and (b)).

SEC. 6. ABOLITION

The East-West Foreign Trade Board established under section 411 of the Trade Act of 1974 (19 U.S.C. 2441) is abolished.

SEC. 7. RESPONSIBILITY OF THE SECRETARY OF STATE

Nothing in this reorganization plan is intended to derogate from the responsibility of the Secretary of State for advising the President on foreign policy matters, including the foreign policy aspects of international trade and trade-related matters:

SEC. 8. INCIDENTAL TRANSFERS; INTERIM OFFICERS

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred to the appropriate agency, organization, or component at such time or times as such Director shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation originally was made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agency abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of the reorganization plan.

(b) Pending the assumption of office by the initial officers provided for in section 2 of this reorganization plan, the functions of each such office may be performed, for up to a total of 60 days, by such individuals as the President may designate. Any individual so designated shall be compensated at the rate provided herein for such position.

SEC. 9. EFFECTIVE DATE

The provisions of this reorganization plan shall take effect October 1, 1980, or at such earlier time or times as the President shall specify, but not sooner than the earliest time allowable under section 906 of title 5 of the United States Code.

[Pursuant to Ex. Ord. 12175, Dec. 7, 1979, 44 F.R. 70705, section 2(b)(1) of this Reorg. Plan is effective Dec. 7, 1979].

[Pursuant to Ex. Ord. 12188, Jan. 2, 1980, 45 F.R. 989, sections 1, 2(a), (b)(2), (c), (d), 3, 4, 5(a), (b)(2), (c)–(e), 6–8 of this Reorg. Plan are effective Jan. 2, 1980, and section 5(b)(1) of this Reorg. Plan is effective Apr. 1, 1980].

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 3 of 1979, to consolidate trade functions of the United States Government. I am acting under the authority vested in me by the Reorganization Act of 1977, chapter 9 of title 5 of the United States Code, and pursuant to section 1109 of the Trade Agreements Act of 1979 [19 U.S.C. 2111 note] which directs that I transmit to the Congress a proposal to restructure the international trade functions of the Executive branch.

The goal of this reorganization is to improve the capacity of the Government to strengthen the export performance of United States industry and to assure fair international trade practices, taking into account the interests of all elements of our economy.

Recent developments, which have raised concern about the vitality of our international trade performance, have focused much attention on the way our trade machinery is organized. These developments include our negative trade balance, increasing dependence upon foreign oil, and international pressures on the dollar. New challenges, such as implementation of the Multilateral Trade Negotiation (MTN) agreements and trade with non-market economies, will further test our Government trade organization.

We must be prepared to apply domestically the MTN codes on procurement, subsidies, standards, and customs valuation. We also must monitor major implementation measures abroad, reporting back to American business on important developments and, where necessary, raising questions internationally about foreign implementation. MTN will work—will open new markets for U.S. labor, farmers, and business—only if we have adequate procedures for aggressively monitoring and enforcing it. We intend to meet our obligations, and we expect others to do the same.

The trade machinery we now have cannot do this job effectively. Although the Special Trade Representative (STR) takes the lead role in administering the trade agreements program, many issues are handled elsewhere and no agency has across-the-board leadership in trade. Aside from the Trade Representative and the Export-Import Bank, trade is not the primary concern of any Executive branch agency where trade functions are located. The current arrangements lack a central authority capable of planning a coherent trade strategy and assuring its vigorous implementation.

This reorganization is designed to correct such deficiencies and to prepare us for strong enforcement of the MTN codes. It aims to improve our export promotion activities so that United States exporters can take full advantage of trade opportunities in foreign markets. It provides for the timely and efficient administration of our unfair trade laws. It also establishes an efficient mechanism for shaping an effective, comprehensive United States trade policy.

To achieve these objectives, I propose to place policy coordination and negotiation—those international trade functions that most require comprehensiveness,

influence, and Government-wide perspective—in the Executive Office of the President. I propose to place operational and implementation responsibilities, which are staff-intensive, in line departments that have the requisite resources and knowledge of the major sectors of our economy to handle them. I have concluded that building our trade structure on STR and Commerce, respectively, best satisfies these considerations.

I propose to enhance STR, to be renamed the Office of the United States Trade Representative, by centralizing in it international trade policy development, coordination and negotiation functions. The Commerce Department will become the focus of non-agricultural operational trade responsibilities by adding to its existing duties those for commercial representation abroad, antidumping and countervailing duty cases, the non-agricultural aspects of MTN implementation, national security investigations, and embargoes.

THE UNITED STATES TRADE REPRESENTATIVE

The Trade Representative, with the advice of the Trade Policy Committee, will be responsible for developing and coordinating our international trade and direct investment policy, including the following areas:

Import remedies.—The Trade Representative will exercise policy oversight of the application of import remedies, analyze long-term trends in import remedy cases and recommend any necessary legislative changes. For antidumping and countervailing duty matters, such coordination, to the extent legally permissible, will be directed toward the establishment of new precedents, negotiation of assurances, and coordination with other trade matters, rather than case-by-case fact finding and determinations.

East-West trade policy.—The Trade Representative will have lead responsibility for East-West trade negotiations and will coordinate East-West trade policy. The Trade Policy Committee will assume the responsibilities of the East-West Foreign Trade Board.

International investment policy.—The Trade Representative will have the policy lead regarding issues of direct foreign investment in the United States, direct investment by Americans abroad, operations of multinational enterprises, and multilateral agreements on international investment, insofar as such issues relate to international trade.

International commodity policy.—The Trade Representative will assume responsibility for commodity negotiations and also will coordinate commodity policy.

Energy trade.—While the Departments of Energy and State will continue to share responsibility for international energy issues, the Trade Representative will coordinate energy trade matters. The Department of Energy will become a member of the TPC.

Export-expansion policy.—To ensure a vigorous and coordinated Government-wide export expansion effort, policy oversight of our export expansion activities will be the responsibility of the Trade Representative.

The Trade Representative will have the lead role in bilateral and multilateral trade, commodity, and direct investment negotiations. The Trade Representative will represent the United States in General Agreement on Tariffs and Trade (GATT) matters. Since the GATT will be the principal international forum for implementing and interpreting the MTN agreements and since GATT meetings, including committee and working group meetings, occur almost continuously, the Trade Representative will have a limited number of permanent staff in Geneva. In some cases, it may be necessary to assign a small number of USTR staff abroad to assist in oversight of MTN enforcement. In this event, appropriate positions will be authorized. In recognition of the responsibility of the Secretary of State regarding our foreign policy, the activities of overseas personnel of the Trade Representative and the Commerce Department will be fully coordinated with other elements of our diplomatic missions.

In addition to his role with regard to GATT matters, the Trade Representative will have the lead responsibility for trade and commodity matters considered in the Organization for Economic Cooperation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD) when such matters are the primary issues under negotiation. Because of the Secretary of State's foreign policy responsibilities, and the responsibilities of the Director of the International Development Cooperation Agency as the President's principal advisor on development, the Trade Representative will exercise his OECD and UNCTAD responsibilities in close cooperation with these officials.

To ensure that all trade negotiations are handled consistently and that our negotiating leverage is employed to the maximum, the Trade Representative will manage the negotiation of particular issues. Where appropriate, the Trade Representative may delegate responsibility for negotiations to other agencies with expertise on the issues under consideration. He will coordinate the operational aspects of negotiations through a Trade Negotiating Committee, chaired by the Trade Representative and including the Departments of Commerce, State, Treasury, Agriculture and Labor.

The Trade Representative will be concerned not only with ongoing negotiations and coordination of specific, immediate issues, but also—very importantly—with the development of long-term United States trade strategies and policies. He will oversee implementation of the MTN agreements, and will advise the President on the effects of other Government policies (e.g., antitrust, taxation) on U.S. trade. In order to participate more fully in oversight of international investment and export financing activities, the Trade Representative will become a member of the National Advisory Council on International Monetary and Financial Policies and the Boards of the Export-Import Bank and the Overseas Private Investment Corporation.

In performing these functions, the Trade Representative will act as the principal trade spokesman of the President. To assure that our trade policies take into account the broadest range of perspectives, the Trade Representative will consult with the Trade Policy Committee, whose mandate and membership will be expanded. The Trade Representative will, as appropriate, invite agencies such as the Export-Import Bank and the Overseas Private Investment Corporation to participate in TPC meetings in addition to the permanent TPC members. When different departmental views on trade matters exist within the TPC as will be the case from time to time in this complex policy area, I will expect the Trade Representative to resolve policy disagreements in his best judgment, subject to appeal to the President.

THE DEPARTMENT OF COMMERCE

The Department of Commerce, under this proposal, will become the focal point of operational responsibilities in the non-agricultural trade area. My reorganization plan will transfer to the Commerce Department important responsibilities for administration of countervailing and antidumping matters, foreign commercial representation, and MTN implementation support. Consolidating these trade functions in the Department of Commerce builds upon an agency with extensive trade experience. The Department will retain its operational responsibilities in such areas as export controls, East-West trade, trade adjustment assistance to firms and communities, trade policy analysis, and monitoring foreign compliance with trade agreements. The Department will be substantially reorganized to consolidate and reshape its trade functions under an Under Secretary for International Trade.

With this reorganization, trade functions will be strengthened within the Department of Commerce, and such related efforts in the Department as improvement of industrial innovation and the productivity, encouraging local and regional economic development, and sectoral analysis, will be closely linked to an aggressive trade program. Fostering the international competitiveness of American industry will become the principal mission of the Department of Commerce.

Import remedies

I propose to transfer to the Department of Commerce responsibility for administration of the countervailing duty and antidumping statutes. This function will be performed efficiently and effectively in an organizational setting where trade is the primary mission. This activity will be directed by a new Assistant Secretary for Trade Administration, subject to Senate confirmation. Although the plan permits its provisions to take effect as late as October 1, 1980, I intend to make this transfer effective by January 1, 1980, so that it will occur as the new MTN codes take effect. Commerce will continue its supportive role in the staffing of other unfair trade practice issues, such as cases arising under section 301 of the Trade Act of 1974 [19 U.S.C. 2411].

Commercial representation

This reorganization plan will transfer to the Department of Commerce responsibility for commercial representation abroad. This transfer would place both domestic and overseas export promotion activities under a single organization, directed by an Assistant Secretary for Export Development, charged with aggressively expanding U.S. export opportunities. Placing this Foreign Commercial Service in the Commerce Department will allow commercial officers to concentrate on the promotion of U.S. exports as their principal activity.

Initially, the transfer of commercial representation from State to Commerce will involve all full-time overseas trade promotion and commercial positions (approximately 162), responsibility for this function in the countries (approximately 60) to which these individuals are assigned, and the associated foreign national employees in those countries. Over time, the Department of Commerce undoubtedly will review the deployment of commercial officers in light of changing trade circumstances and propose extensions or alterations of coverage of the Foreign Commercial Service.

MTN implementation

I am dedicated to the aggressive implementation of the Multilateral Trade Agreements. The United States must seize the opportunities and enforce the obligations created by these agreements. Under this proposal, the Department of Commerce will assign high priority to this task. The Department of Commerce will be responsible for the day-to-day implementation of non-agricultural aspects of the MTN agreements. Management of this function will be a principal assignment of an Assistant Secretary for Trade Policy and Programs. Implementation activities will include:

monitoring agreements and targeting problems for consultation and negotiation;

operating a Trade Complaint Center where the private sector can receive advice as to the recourse and remedies available;

aiding in the settlement of disputes, including staffing of formal complaint cases;

identifying problem areas for consideration by the Trade Representative and the Trade Policy Committee;

educational and promotion programs regarding the provisions of the agreements and the processes for dealing with problems that arise;

providing American business with basic information on foreign laws, regulations and procedures;

consultations with private sector advisory committees; and

general analytical support.

These responsibilities will be handled by a unit built around the staff from Commerce that provided essential analytical support to STR throughout the MTN negotiation process. Building implementation of MTN around this core group will assure that the government's institutional memory and expertise on MTN is most effectively devoted to the challenge ahead. When American business needs information or encounters problems in the MTN area, it can turn to the Department of Commerce for knowledgeable assistance.

Matching the increased importance of trade in the Department's mission will be a much strengthened trade organization within the Department. By creating a number of new senior level positions in the Department, we will ensure that trade policy implementation receives the kind of day-to-day top management attention that it both demands and requires.

With its new responsibilities and resources, the Department of Commerce will become a key participant in the formulation of our trade policies. Much of the analysis in support of trade policy formulation will be conducted by the Department of Commerce, which will be close to the operational aspects of the problems that raise policy issues.

To succeed in global competition, we must have a better understanding of the problems and prospects of U.S. industry, particularly in relation to the growing strength of industries abroad. This is the key reason why we will upgrade sectoral analysis capabilities throughout the Department of Commerce, including the creation of a new Bureau of Industrial Analysis. Commerce, with its ability to link trade to policies affecting industry, is uniquely suited to serve as the principal technical expert within the Government on special industry sector problems requiring international consultation, as well as to provide industry-specific information on how tax, regulatory and other Government policies affect the international competitiveness of the U.S. industries.

Commerce will also expand its traditional trade policy focus on industrial issues to deal with the international trade and investment problems of our growing services sector. Under the proposal, there will be comprehensive service industry representation in our industry advisory process, as well as a continuing effort to bring services under international discipline. I expect the Commerce Department to play a major role in developing new service sector initiatives for consideration within the Government.

After an investigation lasting over a year, I have found that this reorganization is necessary to carry out the policy set forth in section 901(a) of title 5 of the United States Code. As described above, this reorganization will increase significantly our ability to implement the MTN agreements efficiently and effectively and will improve greatly the services of the government with regard to export development. These improvements will be achieved with no increase in personnel or expenditures, except for an annual expense of about $300,000 for the salaries and clerical support of the three additional senior Commerce Department officials and a non-recurring expense of approximately $600,000 in connection with the transfers of functions provided in the plan. I find that the reorganization made by this plan makes necessary the provisions for the appointment and pay of a Deputy Secretary, an Under Secretary for International Trade, and two additional Assistant Secretaries of the Department of Commerce, and additional members of the Boards of Directors of the Export-Import Bank and the Overseas Private Investment Corporation.

It is indeed appropriate that this proposal follows so soon after the overwhelming approval by the Congress of the Trade Agreements Act of 1979 [19 U.S.C. 2501 et seq.], for it will sharpen and unify trade policy direction, improve the efficiency of trade law enforcement, and enable us to negotiate abroad from a position of strength. The extensive discussions between Administration officials and the Congress on this plan have been a model of the kind of cooperation that can exist between the two branches. I look forward to our further cooperation in successfully implementing both this reorganization proposal and the MTN agreements.

JIMMY CARTER.

THE WHITE HOUSE, September 25, 1979.

EXECUTIVE ORDER NO. 11143

Ex. Ord. No. 11143, Mar. 2, 1963, 29 F.R. 3127, as amended by Ex. Ord. No. 11159, June 23, 1964, 29 F.R. 8137, for-

merly set out under section 1871 of this title, which established the Public Advisory Committee for Trade Expansion, was revoked by Ex. Ord. No. 11425, Aug. 30, 1968, 33 F.R. 12363, set out below.

EXECUTIVE ORDER NO. 11425

Ex. Ord. No. 11425, Aug. 30, 1968, 33 F.R. 12363, formerly set out under section 1871 of this title, which directed the Special Representative for Trade Negotiations (established by Ex. Ord. No. 11075, Jan. 15, 1963, 28 F.R. 473) to conduct a long range study of United States foreign trade policy and to consider the views of Congress, the Public Advisory Committee on Trade Policy, and other federal agencies; established the Public Advisory Committee on Trade Policy for purposes of this study; and abolished the Public Advisory Committee for Trade Negotiations; was omitted in view of the revocation of Ex. Ord. No. 11075 by Ex. Ord. No. 11846, Mar. 27, 1975, 40 F.R. 14291, set out under section 2111 of this title, and in view of the abolition of the Office of Special Representative for Trade Negotiations (as established under Ex. Ord. No. 11075) by section 2171(g) of this title.

EX. ORD. NO. 12175. EFFECTIVE DATE OF SECTION 2(b)(1) OF REORGANIZATION PLAN NO. 3 OF 1979 RESPECTING REORGANIZATION OF FUNCTIONS RELATING TO INTERNATIONAL TRADE

Ex. Ord. No. 12175, Dec. 7, 1979, 44 F.R. 70703, provided:

By the authority vested in me as President of the United States of America by Section 9 of Reorganization Plan No. 3 of 1979 (transmitted to the Congress on September 25, 1979) [set out as a note above], the time period prescribed by Section 906 of Title 5 of the United States Code having elapsed without the adoption of a resolution of disapproval by either House of Congress, it is hereby ordered that Section 2(b)(1) of that Plan, establishing the Office of Deputy Secretary of Commerce, is effective immediately.

JIMMY CARTER.

EX. ORD. NO. 12188. FUNCTIONS RELATING TO INTERNATIONAL TRADE

Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 989, as amended by Ex. Ord. No. 12292, Feb. 23, 1981, 46 F.R. 13968; Ex. Ord. No. 13118, §10(6), Mar. 31, 1999, 64 F.R. 16598; Ex. Ord. No. 13286, §50, Feb. 28, 2003, 68 F.R. 10628, provided:

By the authority vested in me by the Trade Agreements Act of 1979 [see 19 U.S.C. 2501], the Trade Act of 1974 [this chapter], the Trade Expansion Act of 1962 [see Short Title note set out under section 1801 of this title], section 350 of the Tariff Act of 1930 [19 U.S.C. 1351], Reorganization Plan No. 3 of 1979 [set out as a note above], and section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1–101. *The United States Trade Representative.*

(a) Except as may be otherwise expressly provided by law, the United States Trade Representative (hereinafter referred to as the ''Trade Representative'') shall be chief representative of the United States for:

(1) all activities of, or under the auspices of, the General Agreement on Tariffs and Trade;

(2) discussions, meetings, and negotiations in the Organization for Economic Cooperation and Development when trade or commodity issues are the primary issues under consideration;

(3) negotiations in the United Nations Conference on Trade and Development and other multilateral institutions when trade or commodity issues are the primary issues under consideration;

(4) other bilateral or multilateral negotiations when trade, including East-West trade, or commodities is the primary issue under consideration;

(5) negotiations under sections 704 and 734 of the Tariff Act of 1930 (19 U.S.C. 1671c and 1673c); and

(6) negotiations concerning direct investment incentives and disincentives and bilateral investment issues concerning barriers to investment.

For purposes of this subsection, the term ''negotiations'' includes discussions and meetings with foreign governments and instrumentalities primarily concerning preparations for formal negotiations and policies regarding implementation of agreements resulting from such negotiations.

(b) The Trade Representative, in consultation with the Trade Negotiating Committee, shall invite such members of the Trade Negotiating Committee and representatives of other departments or agencies as may be appropriate to participate in the negotiations and other activities listed in subsection (a).

(c) The Trade Representative, in consultation with the Trade Negotiating Committee, may delegate to any member of the Trade Negotiating Committee, or to any other appropriate department or agency, primary responsibility for representing the United States in any of the negotiations and other activities set forth in subsection (a).

(d) The Trade Representative, or any department or agency to which responsibility for representing the United States in a negotiation or other activity has been delegated pursuant to subsection (c), shall consult with the Trade Policy Committee and with any affected regulatory agencies on the policy issues arising in connection with the negotiations and other activities listed in subsection (a).

SEC. 1–102. *The Trade Policy Committee.*

(a) As provided by section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872), the Trade Policy Committee (hereinafter referred to as the ''Committee'') is continued. The Committee shall have the functions specified by law or by the President, including those specified in section 1(b)(3) of Reorganization Plan No. 3 of 1979 [set out as a note above].

(b) The Committee shall be composed of the following:

(1) The Trade Representative, who shall be Chair

(2) The Secretary of Commerce, who shall be Vice Chair

(3) The Secretary of State

(4) The Secretary of the Treasury

(5) The Secretary of Defense

(6) The Attorney General

(7) The Secretary of the Interior

(8) The Secretary of Agriculture

(9) The Secretary of Labor

(10) The Secretary of Transportation

(11) The Secretary of Energy

(12) The Secretary of Homeland Security

(13) The Director of the Office of Management and Budget

(14) The Chairman of the Council of Economic Advisers

(15) The Assistant to the President for National Security Affairs

(16) The Administrator of the United States Agency for International Development.

The Chair and any member of the Committee may designate a subordinate officer whose status is not below that of an Assistant Secretary to serve in his stead when he is unable to attend any meetings of the Committee. The Chair may invite representatives from other agencies to attend the meetings of the Committee.

(c)(1) There is established, as a subcommittee of the Committee, a Trade Negotiating Committee which shall advise the Trade Representative on the management of negotiations referred to in section 1–101(a) of this order. The members of such subcommittee shall be the Trade Representative (Chair), the Secretary of State, the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of Labor.

(2) The Trade Representative, with the advice of the Committee, may create additional subcommittees thereof.

(d) In advising the President on international trade and related matters, the Trade Representative shall take into account and reflect the views of the members of the Committee and of other interested agencies.

SEC. 1–103. *Delegation of Functions.*

(a) The function vested in the President by section 412(b) of the Trade Agreements Act of 1979 (19 U.S.C. 2542(b)) is delegated to the Secretary of Commerce with regard to the technical office established under section 412(a)(1) of such Act [19 U.S.C. 2542(a)(1)] and to the Secretary of Agriculture with regard to the technical office established under section 412(a)(2) of such Act [19 U.S.C. 2542(a)(2)]. In prescribing the functions of each technical office, the Secretary concerned shall consult with the Trade Representative and with all affected regulatory agencies. The functions delegated by this section shall be exercised in coordination with the Trade Representative.

(b) The functions of the President under sections 2(b) and 303 of the Trade Agreements Act of 1979 (19 U.S.C. 2503(b) and 2513) and section 701(b) of the Tariff Act of 1930 (19 U.S.C. 1671(b)) are delegated to the Trade Representative, who shall exercise such authority with the advice of the Trade Policy Committee.

SEC. 1–104. *Authority Under the Foreign Service Act and Related Laws.*

(a) The Secretary of Commerce (hereinafter referred to as the ''Secretary'') is authorized to establish a Foreign Commercial Service in the Department of Commerce, and a category of career officers of the Foreign Commercial Service to be known as Foreign Commercial Officers. For purposes of the utilization by the Secretary of the authorities granted to the Secretary under this section, the terms ''Foreign Service'' and ''Foreign Service Officer'' shall be construed to mean ''Foreign Commercial Service'' and ''Foreign Commercial Officer,'' respectively.

(b) [Revoked by Ex. Ord. No. 12292, Feb. 23, 1981, 46 F.R. 13968.]

(c) The Board of the Foreign Service and the Board of Examiners for the Foreign Service established by Executive Order 11264 of December 31, 1965, as amended [22 U.S.C. 826 note], shall exercise with respect to Foreign Service personnel of the Department of Commerce the functions delegated to them by that order with respect to Foreign Service personnel of the Department of State. The Boards shall perform such additional functions with respect to Foreign Service personnel of the Department of Commerce as the Secretary may from time to time delegate or otherwise assign, consistent with the functions of such boards.

SEC. 1–105. *Prior Executive Orders and Determination.*

(a) Section 1(b) of Executive Order 11269 of February 14, 1966, as amended [22 U.S.C. 286b note], is amended by adding ''the United States Trade Representative,'' after ''the Secretary of State,''.

(b)(1) Section 1 of Executive Order 11539 of June 30, 1970 [7 U.S.C. 1854 note], is amended to read as follows:

''Section 1. The United States Trade Representative, with the concurrence of the Secretary of Agriculture and the Secretary of State, is authorized to negotiate bilateral agreements with representatives of governments of foreign countries limiting the export from the respective countries and the importation into the United States of—

''(1) fresh, chilled, or frozen cattle meat,

''(2) fresh, chilled, or frozen meat of goats and sheep (except lambs), and

''(3) prepared and preserved beef and veal (except sausage) if articles are prepared, whether fresh, chilled, or frozen, but not otherwise preserved, that are the products of such countries.''.

(2) Section 4 of such order is amended by striking out ''the Secretary of State'' and inserting in lieu thereof ''the United States Trade Representative''.

(c) The last sentence of section 1(a) of Executive Order 11651 of March 3, 1972, as amended [7 U.S.C. 1854 note] is amended to read as follows: ''The United States Trade Representative, or his designee, also shall be a member of the Committee.''.

(d) The first sentence of section 3 of Executive Order 11703 of February 7, 1973 [19 U.S.C. 1862 note], is amended to read as follows: ''The Oil Policy Committee shall henceforth consist of the United States Trade Representative, chair, and the Secretaries of State, Treasury, Defense, the Interior, Commerce and Energy, the Attorney General, and the Chairman of the Council of Economic Advisers, as members.''.

(e) Sections 2(b) and 3(a), the first sentence of section 3(c), and sections 3(e), 3(f), and 6 of Executive Order 11846 of March 27, 1975, as amended [19 U.S.C. 2111 note], are revoked.

(f)(1) Section 1(a)(5) of Executive Order 11858 of May 7, 1975 [50 U.S.C. App. 2170 note], is amended to read: ''(5) The United States Trade Representative''.

(2) Section 1(a)(6) of such order is amended to read: ''(6) The Chairman of the Council of Economic Advisers''.

(g) Executive Order 12096 of November 2, 1978, is revoked.

(h) The last paragraph of the Presidential Determination Regarding the Acceptance and Application of Certain International Trade Agreements (dated December 14, 1979) (44 FR 74781, at 74784; December 18, 1979) [19 U.S.C. 2503 note], delegating functions under section 2(b) of the Trade Agreements Act of 1979 [19 U.S.C. 2503(b)] and section 701(b) of the Tariff Act of 1930 [19 U.S.C. 1671b], is revoked.

(i) Any reference to the Office of the Special Representative for Trade Negotiations or to the Special Representative for Trade Negotiations in any Executive order, Proclamation, or other document shall be deemed to refer to the Office of the United States Trade Representative or to the United States Trade Representative, respectively.

SEC. 1–106. *Incidental Transfers and Reassignments.*

So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with functions transferred or reassigned by the provisions of this order as the Director of the Office of Management and Budget shall determine shall be transferred or reassigned for use in connection with such functions.

SEC. 1–107. *Effective Dates.*

(a) Sections 1, 2(a), 2(b)(2), 2(c), 2(d), 3, 4, 5(a), 5(b)(2), 5(c) through (e), and 6 through 8 of Reorganization Plan No. 3 of 1979 [set out as a note above] and the provisions of this order, shall take effect as of January 2, 1980.

(b) Section 5(b)(1) of such plan [set out as a note above] shall take effect as of April 1, 1980.

PART 5—CONGRESSIONAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS

§ 2191. Bills implementing trade agreements on nontariff barriers and resolutions approving commercial agreements with Communist countries

(a) Rules of House of Representatives and Senate

This section and sections 2192 and 2193 of this title are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of implementing bills described in subsection (b)(1) of this section, implementing revenue bills described in subsection (b) (2) of this section, approval resolutions described in subsection (b)(3) of this section, and resolutions described in sections 2192(a) and 2193(a) of this title; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of

that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(b) Definitions

For purposes of this section—

(1) The term ''implementing bill'' means only a bill of either House of Congress which is introduced as provided in subsection (c) of this section with respect to one or more trade agreements, or with respect to an extension described in section 3572(c)(3) of this title, submitted to the House of Representatives and the Senate under section 2112 of this title, section 3572 of this title, or section 3805(a)(1) of this title and which contains—

(A) a provision approving such trade agreement or agreements or such extension,

(B) a provision approving the statement of administrative action (if any) proposed to implement such trade agreement or agreements, and

(C) if changes in existing laws or new statutory authority is required to implement such trade agreement or agreements or such extension, provisions, necessary or appropriate to implement such trade agreement or agreements or such extension, either repealing or amending existing laws or providing new statutory authority.

(2) The term ''implementing revenue bill or resolution'' means an implementing bill, or approval resolution, which contains one or more revenue measures by reason of which it must originate in the House of Representatives.

(3) The term ''approval resolution'' means only a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: ''That the Congress approves the extension of nondiscriminatory treatment with respect to the products of _____ transmitted by the President to the Congress on _____.'', the first blank space being filled with the name of the country involved and the second blank space being filled with the appropriate date.

(c) Introduction and referral

(1) On the day on which a trade agreement or extension is submitted to the House of Representatives and the Senate under section 2112 of this title, section 3572 of this title, or section 3805(a)(1) of this title, the implementing bill submitted by the President with respect to such trade agreement or extension shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a trade agreement or extension is submitted, the implementing bill shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. Such bills shall be referred by the Presiding Officers of the respective Houses to the appropriate committee, or, in the case of a bill containing provisions within the jurisdiction of two or more committees, jointly to such committees for consideration of those provisions within their respective jurisdictions.

(2) On the day on which a bilateral commercial agreement, entered into under subchapter IV of this chapter after January 3, 1975, is transmitted to the House of Representatives and the Senate, an approval resolution with respect to such agreement shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement is transmitted, the approval resolution with respect to such agreement shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. The approval resolution introduced in the House shall be referred to the Committee on Ways and Means and the approval resolution introduced in the Senate shall be referred to the Committee on Finance.

(d) Amendments prohibited

No amendment to an implementing bill or approval resolution shall be in order in either the House of Representatives or the Senate; and no motion to suspend the application of this subsection shall be in order in either House, nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this subsection by unanimous consent.

(e) Period for committee and floor consideration

(1) Except as provided in paragraph (2), if the committee or committees of either House to which an implementing bill or approval resolution has been referred have not reported it at the close of the 45th day after its introduction, such committee or committees shall be automatically discharged from further consideration of the bill or resolution and it shall be placed on the appropriate calendar. A vote on final passage of the bill or resolution shall be taken in each House on or before the close of the 15th day after the bill or resolution is reported by the committee or committees of that House to which it was referred, or after such committee or committees have been discharged from further consideration of the bill or resolution. If prior to the passage by one House of an implementing bill or approval resolution of that House, that House receives the same implementing bill or approval resolution from the other House, then—

(A) the procedure in that House shall be the same as if no implementing bill or approval resolution had been received from the other House, but

(B) the vote on final passage shall be on the implementing bill or approval resolution of the other House.

(2) The provisions of paragraph (1) shall not apply in the Senate to an implementing revenue bill or resolution. An implementing revenue bill or resolution received from the House shall be referred to the appropriate committee or committees of the Senate. If such committee or committees have not reported such bill or resolution at the close of the 15th day after its receipt by the Senate (or, if later, before the close of the 45th day after the corresponding implementing revenue bill or resolution was introduced in the Senate), such committee or committees shall be automatically discharged from further consideration of such bill or resolution and it shall be placed on the calendar. A vote on final passage of such bill or resolution shall be taken in the Senate on or before the close of the 15th day after such bill or resolution is reported by the committee or committees of the Senate to which it was referred, or after such committee or committees have been discharged from further consideration of such bill or resolution.

(3) For purposes of paragraphs (1) and (2), in computing a number of days in either House, there shall be excluded any day on which that House is not in session.

(f) Floor consideration in the House

(1) A motion in the House of Representatives to proceed to the consideration of an implementing bill or approval resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the House of Representatives on an implementing bill or approval resolution shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the bill or resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit an implementing bill or approval resolution or to move to reconsider the vote by which an implementing bill or approval resolution is agreed to or disagreed to.

(3) Motions to postpone, made in the House of Representatives with respect to the consideration of an implementing bill or approval resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to an implementing bill or approval resolution shall be decided without debate.

(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of an implementing bill or approval resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(g) Floor consideration in the Senate

(1) A motion in the Senate to proceed to the consideration of an implementing bill or approval resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the Senate on an implementing bill or approval resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(3) Debate in the Senate on any debatable motion or appeal in connection with an implementing bill or approval resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill or resolution, except that in the event the manager of the bill or resolution is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of an implementing bill or approval resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(4) A motion in the Senate to further limit debate is not debatable. A motion to recommit an implementing bill or approval resolution is not in order.

(Pub. L. 93–618, title I, §151, Jan. 3, 1975, 88 Stat. 2001; Pub. L. 100–418, title I, §1107(b)(1), Aug. 23, 1988, 102 Stat. 1135; Pub. L. 101–382, title I, §132(b)(2), Aug. 20, 1990, 104 Stat. 645; Pub. L. 103–465, title II, §282(c)(4), Dec. 8, 1994, 108 Stat. 4929; Pub. L. 107–210, div. B, title XXI, §2110(a)(1), Aug. 6, 2002, 116 Stat. 1019.)

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–210, §2110(a)(1)(A), substituted ''section 3572 of this title, or section 3805(a)(1) of this title'' for ''section 2903(a)(1) of this title, or section 3572 of this title'' in introductory provisions.

Subsec. (c)(1). Pub. L. 107–210, §2110(a)(1)(B), substituted '', section 3572 of this title, or section 3805(a)(1) of this title'' for ''or section 3572 of this title''.

1994—Subsec. (b)(1). Pub. L. 103–465, §282(c)(4)(A), in introductory provisions, inserted '', or with respect to an extension described in section 3572(c)(3) of this title,'' after ''trade agreements'' and substituted '', section 2903(a)(1) of this title, or section 3572 of this title'' for ''or section 2903(a)(1) of this title'', and in subpars. (A) and (C), inserted ''or such extension'' after ''agreements'' wherever appearing.

Subsec. (c)(1). Pub. L. 103–465, §282(c)(4)(B), inserted ''or section 3572 of this title'' after ''section 2112 of this title'' and ''or extension'' after ''agreement'' wherever appearing.

1990—Subsec. (b)(2). Pub. L. 101–382, §132(b)(2)(A), (B), inserted ''or resolution'' after ''revenue bill'' and '', or approval resolution,'' after ''implementing bill''.

Subsec. (b)(3). Pub. L. 101–382, §132(b)(2)(C), substituted ''joint'' for ''concurrent''.

Subsec. (e)(2). Pub. L. 101–382, §132(b)(2)(D), (E), substituted ''revenue bill or resolution'' for ''revenue bill'' in three places and ''such bill or resolution'' for ''such bill'' in five places.

1988—Subsec. (b)(1). Pub. L. 100–418 inserted reference to section 2903(a)(1) of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO

Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of subtitle IV (§ 1671 et seq.) of chapter 4 of this title after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

§ 2192. Resolutions disapproving certain actions

(a) Contents of resolutions

(1) For purposes of this section, the term ''resolution'' means only—

(A) a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: ''That the Congress does not approve the action taken by, or the determination of, the President under section 203 of the Trade Act of 1974 transmitted to the Congress on _____.'', the blank space being filled with the appropriate date; and

(B) a joint resolution of the two Houses of Congress, the matter after the resolving clause of which is as follows: ''That the Congress does not approve _____ transmitted to the Congress on _____.'', with the first blank space being filled in accordance with paragraph (2), and the second blank space being filled with the appropriate date.

(2) The first blank space referred to in paragraph (1)(B) shall be filled, in the case of a resolution referred to in section 2437(c)(2) of this title, with the phrase ''the report of the President submitted under section _____ of the Trade Act of 1974 with respect to _____'' (with the first blank space being filled with ''402(b)'' or ''409(b)'', as appropriate, and the second blank space being filled with the name of the country involved).

(b) Reference to committees

All resolutions introduced in the House of Representatives shall be referred to the Committee on Ways and Means and all resolutions introduced in the Senate shall be referred to the Committee on Finance.

(c) Discharge of committees

(1) If the committee of either House to which a resolution has been referred has not reported it at the end of 30 days after its introduction, not counting any day which is excluded under section 2194(b) of this title, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution introduced with respect to the same matter, except that a motion to discharge—

(A) may only be made on the second legislative day after the calendar day on which the Member making the motion announces to the House his intention to do so; and

(B) is not in order after the Committee[1] has reported a resolution with respect to the same matter.

(2) A motion to discharge under paragraph (1) may be made only by an individual favoring the resolution, and is highly privileged in the House and privileged in the Senate; and debate thereon shall be limited to not more than 1 hour, the time to be divided in the House equally between those favoring and those opposing the resolution, and to be divided in the Senate equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(d) Floor consideration in the House

(1) A motion in the House of Representatives to proceed to the consideration of a resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the House of Representatives on a resolution shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution shall be in order. It shall not be in order to move to reconsider the vote by which a resolution is agreed to or disagreed to.

(3) Motions to postpone, made in the House of Representatives with respect to the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a resolution shall be decided without debate.

(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of a resolution in the House of Representatives shall be governed by the Rules of the House of Representatives applicable to other resolutions in similar circumstances.

(e) Floor consideration in the Senate

(1) A motion in the Senate to proceed to the consideration of a resolution shall be privileged. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the Senate on a resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(3) Debate in the Senate on any debatable motion or appeal in connection with a resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

[1] So in original. Probably should not be capitalized.

(4) A motion in the Senate to further limit debate on a resolution, debatable motion, or appeal is not debatable. No amendment to, or motion to recommit, a resolution is in order in the Senate.

(f) Procedures in the Senate

(1) Except as otherwise provided in this section, the following procedures shall apply in the Senate to a resolution to which this section applies:

(A)(i) Except as provided in clause (ii), a resolution that has passed the House of Representatives shall, when received in the Senate, be referred to the Committee on Finance for consideration in accordance with this section.

(ii) If a resolution to which this section applies was introduced in the Senate before receipt of a resolution that has passed the House of Representatives, the resolution from the House of Representatives shall, when received in the Senate, be placed on the calendar. If this clause applies, the procedures in the Senate with respect to a resolution introduced in the Senate that contains the identical matter as the resolution that passed the House of Representatives shall be the same as if no resolution had been received from the House of Representatives, except that the vote on passage in the Senate shall be on the resolution that passed the House of Representatives.

(B) If the Senate passes a resolution before receiving from the House of Representatives a joint resolution that contains the identical matter, the joint resolution shall be held at the desk pending receipt of the joint resolution from the House of Representatives. Upon receipt of the joint resolution from the House of Representatives, such joint resolution shall be deemed to be read twice, considered, read the third time, and passed.

(2) If the texts of joint resolutions described in this section or section 2193(a) of this title, whichever is applicable, concerning any matter are not identical—

(A) the Senate shall vote passage on the resolution introduced in the Senate, and

(B) the text of the joint resolution passed by the Senate shall, immediately upon its passage (or, if later, upon receipt of the joint resolution passed by the House), be substituted for the text of the joint resolution passed by the House of Representatives, and such resolution, as amended, shall be returned with a request for a conference between the two Houses.

(3) Consideration in the Senate of any veto message with respect to a joint resolution described in subsection (a)(2)(B) of this section or section 2193(a) of this title, including consideration of all debatable motions and appeals in connection therewith, shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(Pub. L. 93–618, title I, §152, Jan. 3, 1975, 88 Stat. 2004; Pub. L. 96–39, title IX, §902(a)(1), title XI, §1106(c)(5), July 26, 1979, 93 Stat. 299, 312; Pub. L. 98–573, title II, §248(b), Oct. 30, 1984, 98 Stat. 2998; Pub. L. 101–382, title I, §132(c)(2)–(5), Aug. 20, 1990, 104 Stat. 646, 647; Pub. L. 103–465, title II, §261(d)(1)(A)(ii), Dec. 8, 1994, 108 Stat. 4909; Pub. L. 104–295, §20(b)(10), Oct. 11, 1996, 110 Stat. 3527.)

REFERENCES IN TEXT

Section 203 of the Trade Act of 1974, referred to in subsec. (a)(1)(A), is section 203 of Pub. L. 93–618, title II, Jan. 3, 1975, 88 Stat. 2015, which is classified to section 2253 of this title.

Sections 402(b) and 409(b) of the Trade Act of 1974, referred to in subsec. (a)(2)(C), are sections 402(b) and 409(b) of Pub. L. 93–618, title IV, Jan. 3, 1975, 88 Stat. 2060, 2064, respectively, which are classified to sections 2432 and 2439 of this title, respectively.

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–295 amended directory language of Pub. L. 103–465. See 1994 Amendment note below.

1994—Subsec. (a)(2). Pub. L. 103–465, as amended by Pub. L. 104–295, substituted comma for ''as follows:'' after ''shall be filled'' in introductory provisions, struck out ''(B)'' before ''in the case'', and struck out subpar. (A) which read as follows: ''in the case of a resolution referred to in section 1303(e) of this title, with the phrase 'the determination of the Secretary of the Treasury under section 303(d) of the Tariff Act of 1930'; and''.

1990—Subsec. (a)(1)(B). Pub. L. 101–382, §132(c)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''a resolution of either House of the Congress, the matter after the resolving clause of which is as follows: 'That the _____ does not approve _____ transmitted to the Congress on _____.', with the first blank space being filled with the name of the resolving House, the second blank space being filled in accordance with paragraph (2), and the third blank space being filled with the appropriate date.''

Subsec. (a)(2). Pub. L. 101–382, §132(c)(3), substituted ''first'' for ''second'' in introductory provisions and ''2437(c)(2)'' for ''2437(c)(3)'' in subpar. (C), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: ''in the case of a resolution referred to in section 2437(c)(2) of this title, with the phrase 'the extension of nondiscriminatory treatment with respect to the products of _____' (with this blank space being filled with the name of the country involved); and''.

Subsec. (c)(1). Pub. L. 101–382, §132(c)(4), substituted ''except that a motion to discharge—

''(A) may only be made on the second legislative day after the calendar day on which the Member making the motion announces to the House his intention to do so; and

''(B) is not in order after the Committee has reported a resolution with respect to the same matter''

for ''except no motion to discharge shall be in order after the committee has reported a resolution with respect to the same matter''.

Subsec. (f). Pub. L. 101–382, §132(c)(5), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''In the case of a resolution described in subsection (a)(1) of this section, if prior to the passage by one House of a resolution of that House, that House receives a resolution with respect to the same matter from the other House, then—

''(1) the procedure in that House shall be the same as if no resolution had been received from the other House; but

''(2) the vote on final passage shall be on the resolution of the other House.''

1984—Subsec. (a)(1)(A). Pub. L. 98–573 substituted ''joint resolution'' for ''concurrent resolution''.

1979—Subsec. (a)(1)(A). Pub. L. 96–39, §902(a)(1)(A), substituted ''does not approve the action taken by, or the determination of, the President under section 203 of the Trade Act of 1974 transmitted to the Congress on _____.', the blank space being filled with the appro-

priate date'' for ''does not approve _____ transmitted to the Congress on _____.', the first blank space being filled in accordance with paragraph (2) and the second blank space being filled with the appropriate date''.

Subsec. (a)(1)(B). Pub. L. 96–39, §902(a)(1)(B), substituted ''paragraph (2),'' for ''paragraph (3),''.

Subsec. (a)(2), (3). Pub. L. 96–39, §902(a)(1)(C), (D), redesignated par. (3) as (2). Former par. (2), relating to the first blank space referred to in subsec. (a)(1)(A), was struck out.

Subsec. (c)(1). Pub. L. 96–39, §1106(c)(5), substituted ''section 2194(b) of this title'' for ''section 2193(b) of this title''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective on the effective date of title II of Pub. L. 103–465, Jan. 1, 1995, see section 261(d)(2) of Pub. L. 103–465, set out as a note under section 1315 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 132(c)(4) and (5) of Pub. L. 101–382 applicable with respect to recommendations made under section 2432(d) of this title by the President after May 23, 1990, see section 132(d) of Pub. L. 101–382, set out as a note under section 2432 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective on 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective July 26, 1979, see sections 903 and 1114 of Pub. L. 96–39, set out as Effective Date notes under sections 2411 and 2581 of this title, respectively.

§ 2193. Resolutions relating to extension of waiver authority under section 402 of the Trade Act of 1974

(a) Contents of resolution

For purposes of this section, the term ''resolution'' means only a joint resolution of the two Houses of Congress, the matter after the resolving clause of which is as follows: ''That the Congress does not approve the extension of the authority contained in section 402(c) of the Trade Act of 1974 recommended by the President to the Congress on _____ with respect to _____.'', with the first blank space being filled with the appropriate date, and the second blank space being filled with the names of those countries, if any, with respect to which such extension of authority is not approved, and with the clause beginning with ''with respect to'' being omitted if the extension of the authority is not approved with respect to any country.

(b) Application of rules of section 2192 of this title; exceptions

(1) Except as provided in this section, the provisions of section 2192 of this title shall apply to resolutions described in subsection (a) of this section.

(2) In applying section 2192(c)(1) of this title, all calendar days shall be counted.

(3) That part of section 2192(d)(2) of this title which provides that no amendment is in order shall not apply to any amendment to a resolution which is limited to striking out or inserting the names of one or more countries or to striking out or inserting a with-respect-to clause. Debate in the House of Representatives on any amendment to a resolution shall be limited to not more than 1 hour which shall be equally divided between those favoring and those opposing the amendment. A motion in the House to further limit debate on an amendment to a resolution is not debatable.

(4) That part of section 2192(e)(4) of this title which provides that no amendment is in order shall not apply to any amendment to a resolution which is limited to striking out or inserting the names of one or more countries or to striking out or inserting a with-respect-to clause. The time limit on a debate on a resolution in the Senate under section 2192(e)(2) of this title shall include all amendments to a resolution. Debate in the Senate on any amendment to a resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such amendment, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and minority leader may, from time under their control on the passage of a resolution, allot additional time to any Senator during the consideration of any amendment. A motion in the Senate to further limit debate on an amendment to a resolution is not debatable.

(c) Consideration of second resolution not in order

It shall not be in order in either the House of Representatives or the Senate to consider a resolution with respect to a recommendation of the President under section 2432(d) of this title (other than a resolution described in subsection (a) of this section received from the other House), if that House has adopted a resolution with respect to the same recommendation.

(d) Procedures relating to conference reports in the Senate

(1) Consideration in the Senate of the conference report on any joint resolution described in subsection (a) of this section, including consideration of all amendments in disagreement (and all amendments thereto), and consideration of all debatable motions and appeals in connection therewith, shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees. Debate on any debatable motion or appeal related to the conference report shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the conference report.

(2) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment to any amendment in disagreement shall be received unless it is a germane amendment.

(Pub. L. 93–618, title I, §153, Jan. 3, 1975, 88 Stat. 2006; Pub. L. 101–382, title I, §132(a)(3)–(6), Aug. 20, 1990, 104 Stat. 644, 645.)

REFERENCES IN TEXT

Section 402 of the Trade Act of 1974, referred to in catchline and subsec. (a), is classified to section 2432 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–382, §132(a)(3), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''For purposes of this section, the term 'resolution' means only—

''(1) a concurrent resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: 'That the Congress approves the extension of the authority contained in section 402(c)(1) of the Trade Act of 1974 recommended by the President to the Congress on _____, except with respect to _____.', with the first blank space being filled with the appropriate date and the second blank space being filled with the names of those countries, if any, with respect to which such extension of authority is not approved, and with the except clause being omitted if there is no such country; and

''(2) a resolution of either House of the Congress, the matter after the resolving clause of which is as follows: 'That the _____ does not approve the extension of the authority contained in section 402(c) of the Trade Act of 1974 recommended by the President to the Congress on _____ with respect to _____.', with the first blank space being filled with the name of the resolving House, the second blank space being filled with the appropriate date, and the third blank space being filled with the names of those countries, if any, with respect to which such extension of authority is not approved, and with the with-respect-to clause being omitted if the extension of the authority is not approved with respect to any country.''

Subsec. (b). Pub. L. 101–382, §132(a)(4), in par. (2), struck out provisions substituting 20 days for 30 days in resolution related to section 2432(d)(4) of this title, and in pars. (3) and (4), struck out provisions relating to except clause in resolutions under subsec. (a)(1) and provisions identifying with-respect-to clause as relating to resolutions under subsec. (a)(2).

Subsec. (c). Pub. L. 101–382, §132(a)(5), substituted ''subsection (a)'' for ''subsection (a)(1)''.

Subsec. (d). Pub. L. 101–382, §132(a)(6), added subsec. (d).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–382 applicable with respect to recommendations made under section 2432(d) of this title by the President after May 23, 1990, see section 132(d) of Pub. L. 101–382, set out as a note under section 2432 of this title.

§ 2194. Special rules relating to Congressional procedures

(a) Delivery of documents to both Houses

Whenever, pursuant to section 2112(e), 2253(b), 2432(d), or 2437(a) or (b), a document is required to be transmitted to the Congress, copies of such document shall be delivered to both Houses of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(b) Computation of 90-day period

For purposes of sections 2253(c) and 2437(c)(2) of this title, the 90-day period referred to in such sections shall be computed by excluding—

(1) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(2) any Saturday and Sunday, not excluded under paragraph (1), when either House is not in session.

(Pub. L. 93–618, title I, §154, Jan. 3, 1975, 88 Stat. 2008; Pub. L. 96–39, title IX, §902(a)(2), July 26, 1979, 93 Stat. 300; Pub. L. 101–382, title I, §132(c)(6), Aug. 20, 1990, 104 Stat. 647; Pub. L. 103–465, title II, §261(d)(1)(A)(iii), Dec. 8, 1994, 108 Stat. 4909; Pub. L. 106–36, title I, §1001(a)(5), June 25, 1999, 113 Stat. 130.)

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–36 substituted ''For purposes of sections 2253(c) and 2437(c)(2) of this title, the 90-day period'' for ''For purposes of sections 2253(c), and 2437(c)(2) of this title, the 90-day period'' in introductory provisions.

1994—Subsec. (a). Pub. L. 103–465 struck out reference to section 1303(e) of this title.

1990—Subsec. (b). Pub. L. 101–382, which directed the substitution of ''and 2437(c)(2)'' for ''2437(c)(2) and 2437(c)(3)'', was executed by making the substitution for ''2437(c)(2), and 2437(c)(3)'' to reflect the probable intent of Congress.

1979—Subsec. (a). Pub. L. 96–39 struck out reference to section 2412(a) of this title.

Subsec. (b). Pub. L. 96–39 struck out reference to section 2412(b) of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective on the effective date of title II of Pub. L. 103–465, Jan. 1, 1995, see section 261(d)(2) of Pub. L. 103–465, set out as a note under section 1315 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective July 26, 1979, see section 903 of Pub. L. 96–39, set out as an Effective Date note under section 2411 of this title.

PART 6—CONGRESSIONAL LIAISON AND REPORTS

§ 2211. Congressional advisers for trade policy and negotiations

(a) Selection

(1) At the beginning of each regular session of Congress, the Speaker of the House of Representatives, upon the recommendation of the chairman of the Committee on Ways and Means, shall select 5 members (not more than 3 of whom are members of the same political party) of such committee, and the President pro tempore of the Senate, upon the recommendation of the chairman of the Committee on Finance, shall select 5 members (not more than 3 of whom are members of the same political party) of such committee, who shall be designated congressional advisers on trade policy and negotiations. They shall provide advice on the development of trade policy and priorities for the implementation thereof. They shall also be accredited by the United States Trade Representative on behalf of the President as official advisers to the United States delegations to international conferences, meetings, and negotiating sessions relating to trade agreements.

(2)(A) In addition to the advisers designated under paragraph (1) from the Committee on Ways and Means and the Committee on Finance—

(i) the Speaker of the House may select additional members of the House, for designation as congressional advisers regarding specific trade policy matters or negotiations, from any other committee of the House or joint committee of Congress that has jurisdiction over

legislation likely to be affected by such matters or negotiations; and

(ii) the President pro tempore of the Senate may select additional members of the Senate, for designation as congressional advisers regarding specific trade policy matters or negotiations, from any other committee of the Senate or joint committee of Congress that has jurisdiction over legislation likely to be affected by such matters or negotiations.

Members of the House and Senate selected as congressional advisers under this subparagraph shall be accredited by the United States Trade Representative.

(B) Before designating any member under subparagraph (A), the Speaker or the President pro tempore shall consult with—

(i) the chairman and ranking member of the Committee on Ways and Means or the Committee on Finance, as appropriate; and

(ii) the chairman and ranking minority member of the committee from which the member will be selected.

(C) Not more than 3 members (not more than 2 of whom are members of the same political party) may be selected under this paragraph as advisers from any committee of Congress.

(b) Briefing

(1) The United States Trade Representative shall keep each official adviser designated under subsection (a)(1) of this section currently informed on matters affecting the trade policy of the United States and, with respect to possible agreements, negotiating objectives, the status of negotiations in progress, and the nature of any changes in domestic law or the administration thereof which may be recommended to Congress to carry out any trade agreement or any requirement of, amendment to, or recommendation under, such agreement.

(2) The United States Trade Representative shall keep each official adviser designated under subsection (a)(2) of this section currently informed regarding the trade policy matters and negotiations with respect to which the adviser is designated.

(3)(A) The chairmen of the Committee on Ways and Means and the Committee on Finance may designate members (in addition to the official advisers under subsection (a)(1) of this section) and staff members of their respective committees who shall have access to the information provided to official advisers under paragraph (1).

(B) The Chairman[1] of any committee of the House or Senate or any joint committee of Congress from which official advisers are selected under subsection (a)(2) of this section may designate other members of such committee, and staff members of such committee, who shall have access to the information provided to official advisers under paragraph (2).

(c) Committee consultation

The United States Trade Representative shall consult on a continuing basis with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the other appropriate committees of the House and Senate on the development, implementation, and administration of overall trade policy of the United States. Such consultations shall include, but are not limited to, the following elements of such policy:

(1) The principal multilateral and bilateral negotiating objectives and the progress being made toward their achievement.

(2) The implementation, administration, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolution of trade disputes.

(3) The actions taken, and proposed to be taken, under the trade laws of the United States and the effectiveness, or anticipated effectiveness, of such actions in achieving trade policy objectives.

(4) The important developments and issues in other areas of trade for which there must be developed proper policy response.

When necessary, meetings shall be held with each Committee[1] in executive session to review matters under negotiation.

(Pub. L. 93–618, title I, § 161, Jan. 3, 1975, 88 Stat. 2008; Pub. L. 96–39, § 3(e), July 26, 1979, 93 Stat. 150; Pub. L. 100–418, title I, § 1632, Aug. 23, 1988, 102 Stat. 1269.)

AMENDMENTS

1988—Pub. L. 100–418 amended section generally, substituting present provisions for similar provisions which had related to Congressional delegates to negotiations, and changing the structure of the section from one consisting of subsecs. (a) and (b) to one consisting of subsecs. (a) to (c).

1979—Subsec. (b)(1). Pub. L. 96–39 substituted ''trade agreement or any requirement of, amendment to, or recommendation under, such agreement'' for ''trade agreement''.

§ 2212. Transmission of agreements to Congress

(a) Submission of copy and reasons

As soon as practicable after a trade agreement entered into under section 2133 or 2134 of this title or under section 3803 of this title has entered into force with respect to the United States, the President shall, if he has not previously done so, transmit a copy of such trade agreement to each House of the Congress together with a statement, in the light of the advice of the International Trade Commission under section 2151(b) of this title, if any, and of other relevant considerations, of his reasons for entering into the agreement.

(b) Submission to each member

The President shall transmit to each Member of the Congress a summary of the information required to be transmitted to each House under subsection (a) of this section. For purposes of this subsection, the term ''Member'' includes any Delegate or Resident Commissioner.

(Pub. L. 93–618, title I, § 162, Jan. 3, 1975, 88 Stat. 2008; Pub. L. 100–647, title IX, § 9001(a)(10), Nov. 10, 1988, 102 Stat. 3807; Pub. L. 107–210, div. B, title XXI, § 2110(a)(6), Aug. 6, 2002, 116 Stat. 1020.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–210 substituted ''or under section 3803 of this title'' for ''or under section 2902 of this title''.

[1] So in original. Probably should not be capitalized.

1988—Subsec. (a). Pub. L. 100–647 struck out ''part 1 of this subchapter or'' after ''entered into under'', and inserted ''or under section 2902 of this title'' after ''2134 of this title''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable as if such amendment took effect on Aug. 23, 1988, see section 9001(b) of Pub. L. 100–647, set out as an Effective and Termination Dates of 1988 Amendments note under section 58c of this title.

DELEGATION OF AUTHORITY

For delegation of functions of President under div. B of Pub. L. 107–210, amending this section, see section 1 of Ex. Ord. No. 13277, Nov. 19, 2002, 67 F.R. 70305, set out as a note under section 3801 of this title.

§ 2213. Reports

(a) Annual report on trade agreements program and national trade policy agenda

(1) The President shall submit to the Congress during each calendar year (but not later than March 1 of that year) a report on—

(A) the operation of the trade agreements program, and the provision of import relief and adjustment assistance to workers and firms, under this chapter during the preceding calendar year; and

(B) the national trade policy agenda for the year in which the report is submitted.

(2) The report shall include, with respect to the matters referred to in paragraph (1)(A), information regarding—

(A) new trade negotiations;

(B) changes made in duties and nontariff barriers and other distortions of trade of the United States;

(C) reciprocal concessions obtained;

(D) changes in trade agreements (including the incorporation therein of actions taken for import relief and compensation provided therefor);

(E) the extension or withdrawal of nondiscriminatory treatment by the United States with respect to the products of foreign countries;

(F) the extension, modification, withdrawal, suspension, or limitation of preferential treatment to exports of developing countries;

(G) the results of actions to obtain the removal of foreign trade restrictions (including discriminatory restrictions) against United States exports and the removal of foreign practices which discriminate against United States service industries (including transportation and tourism) and investment;

(H) the measures being taken to seek the removal of other significant foreign import restrictions;

(I) each of the referrals made under section 2171(d)(1)(B) of this title and any action taken with respect to such referral;

(J) other information relating to the trade agreements program and to the agreements entered into thereunder; and

(K) the number of applications filed for adjustment assistance for workers and firms, the number of such applications which were approved, and the extent to which adjustment assistance has been provided under such approved applications.

(3)(A) The national trade policy agenda required under paragraph (1)(B) for the year in which a report is submitted shall be in the form of a statement of—

(i) the trade policy objectives and priorities of the United States for the year, and the reasons therefor;

(ii) the actions proposed, or anticipated, to be undertaken during the year to achieve such objectives and priorities, including, but not limited to, actions authorized under the trade laws and negotiations with foreign countries;

(iii) any proposed legislation necessary or appropriate to achieve any of such objectives or priorities; and

(iv) the progress that was made during the preceding year in achieving the trade policy objectives and priorities included in the statement provided for that year under this paragraph.

(B) The President may separately submit any information referred to in subparagraph (A) to the Congress in confidence if the President considers confidentiality appropriate.

(C) Before submitting the national trade policy agenda for any year, the President shall seek advice from the appropriate advisory committees established under section 2155 of this title and shall consult with the appropriate committees of the Congress.

(D) The United States Trade Representative (hereafter referred to in this section as the ''Trade Representative'') and other appropriate officials of the United States Government shall consult periodically with the appropriate committees of the Congress regarding the annual objectives and priorities set forth in each national trade policy agenda with respect to—

(i) the status and results of the actions that have been undertaken to achieve the objectives and priorities; and

(ii) any development which may require, or result in, changes to any of such objectives or priorities.

(b) Annual trade projection report

(1) In order for the Congress to be informed of the impact of foreign trade barriers and macroeconomic factors on the balance of trade of the United States, the Trade Representative and the Secretary of the Treasury shall jointly prepare and submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter referred to in this subsection as the ''Committees'') on or before March 1 of each year a report which consists of—

(A) a review and analysis of—

(i) the merchandise balance of trade,

(ii) the goods and services balance of trade,

(iii) the balance on the current account,

(iv) the external debt position,

(v) the exchange rates,

(vi) the economic growth rates,

(vii) the deficit or surplus in the fiscal budget, and

(viii) the impact on United States trade of market barriers and other unfair practices,

of countries that are major trading partners of the United States, including, as appropriate, groupings of such countries;

(B) projections for each of the economic factors described in subparagraph (A) (except those described in clauses (v) and (viii)) for each of the countries and groups of countries referred to in subparagraph (A) for the year in which the report is submitted and for the succeeding year; and

(C) conclusions and recommendations, based upon the projections referred to in subparagraph (B), for policy changes, including trade policy, exchange rate policy, fiscal policy, and other policies that should be implemented to improve the outlook.

(2) To the extent that subjects referred to in paragraph (1)(A), (B), or (C) are covered in the national trade policy agenda required under subsection (a)(1)(B) of this section or in other reports required by this chapter or other law, the Trade Representative and the Secretary of the Treasury may, as appropriate, draw on the information, analysis, and conclusions, if any, in those reports for the purposes of preparing the report required by this subsection.

(3) The Trade Representative and the Secretary of the Treasury shall consult with the Chairman of the Board of Governors of the Federal Reserve System in the preparation of each report required under this subsection.

(4) The Trade Representative and the Secretary of the Treasury may separately submit any information, analysis, or conclusion referred to in paragraph (1) to the Committees in confidence if the Trade Representative and the Secretary consider confidentiality appropriate.

(5) After submission of each report required under paragraph (1), the Trade Representative and the Secretary of the Treasury shall consult with each of the Committees with respect to the report.

(c) ITC reports

The United States International Trade Commission shall submit to the Congress, at least once a year, a factual report on the operation of the trade agreements program.

(Pub. L. 93–618, title I, §163, Jan. 3, 1975, 88 Stat. 2009; Pub. L. 100–418, title I, §1641, Aug. 23, 1988, 102 Stat. 1271.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1)(A) and (b), was in the original ''this Act'', meaning Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

AMENDMENTS

1988—Pub. L. 100–418 amended section generally, completely revising and expanding provisions covering reports, changing the structure of the section from one consisting of subsecs. (a) and (b) to one consisting of subsecs. (a) to (c).

DELEGATION OF FUNCTIONS

Memorandum of President of the United States, Mar. 1, 2004, 69 F.R. 10133, provided:

Memorandum for the United States Trade Representative

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions conferred upon the President by section 163 of the Trade Act of 1974, as amended (19 U.S.C. 2213), to provide the specified report to the Congress.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

TRADE DEFICIT REVIEW COMMISSION

Pub. L. 105–277, div. A, §127, Oct. 21, 1998, 112 Stat. 2681–547, as amended by Pub. L. 106–57, title III, §311, Sept. 29, 1999, 113 Stat. 427; Pub. L. 106–246, div. B, title II, §2501, July 13, 2000, 114 Stat. 556; Pub. L. 107–107, div. A, title X, §1048(i)(10), Dec. 28, 2001, 115 Stat. 1229, provided that:

''(a) SHORT TITLE.—This section may be cited as the 'Trade Deficit Review Commission Act'.

''(b) FINDINGS.—Congress makes the following findings:

''(1) The United States continues to run substantial merchandise trade and current account deficits.

''(2) Economic forecasts anticipate continued growth in such deficits in the next few years.

''(3) The positive net international asset position that the United States built up over many years was eliminated in the 1980s. The United States today has become the world's largest debtor nation.

''(4) The United States merchandise trade deficit is characterized by large bilateral trade imbalances with a handful of countries.

''(5) The United States has one of the most open borders and economies in the world. The United States faces significant tariff and nontariff trade barriers with its trading partners. The United States does not benefit from fully reciprocal market access.

''(6) The United States is once again at a critical juncture in trade policy development. The nature of the United States trade deficit and its causes and consequences must be analyzed and documented.

''(c) ESTABLISHMENT OF COMMISSION.—

''(1) ESTABLISHMENT.—There is established a commission to be known as the Trade Deficit Review Commission (hereafter in this section referred to as the 'Commission').

''(2) PURPOSE.—The purpose of the Commission is to study the nature, causes, and consequences of the United States merchandise trade and current account deficits.

''(3) MEMBERSHIP OF COMMISSION.—

''(A) COMPOSITION.—The Commission shall be composed of 12 members as follows:

''(i) Three persons shall be appointed by the President pro tempore of the Senate upon the recommendation of the Majority Leader of the Senate, after consultation with the Chairman of the Committee on Finance.

''(ii) Three persons shall be appointed by the President pro tempore of the Senate upon the recommendation of the Minority Leader of the Senate, after consultation with the ranking minority member of the Committee on Finance.

''(iii) Three persons shall be appointed by the Speaker of the House of Representatives, after consultation with the Chairman of the Committee on Ways and Means.

''(iv) Three persons shall be appointed by the Minority Leader of the House of Representatives, after consultation with the ranking minority member of the Committee on Ways and Mean.

''(B) QUALIFICATIONS OF MEMBERS.—

''(i) APPOINTMENTS.—Persons who are appointed under subparagraph (A) shall be persons who—

''(I) have expertise in economics, international trade, manufacturing, labor, environment, business, or have other pertinent qualifications or experience; and

''(II) are not officers or employees of the United States.

''(ii) OTHER CONSIDERATIONS.—In appointing Commission members, every effort shall be made to ensure that the members—

''(I) are representative of a broad cross-section of economic and trade perspectives within the United States; and

''(II) provide fresh insights to analyzing the causes and consequences of United States merchandise trade and current account deficits.

''(4) PERIOD OF APPOINTMENT; VACANCIES.—

''(A) IN GENERAL.—Members shall be appointed not later than 60 days after the date of enactment of this Act [Oct. 21, 1998] and the appointment shall be for the life of the Commission.

''(B) VACANCIES.—Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

''(5) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

''(6) MEETINGS.—The Commission shall meet at the call of the Chairperson.

''(7) CHAIRPERSON AND VICE CHAIRPERSON.—The members of the Commission shall elect a chairperson and vice chairperson from among the members of the Commission.

''(8) QUORUM.—A majority of the members of the Commission shall constitute a quorum for the transaction of business.

''(9) VOTING.—Each member of the Commission shall be entitled to 1 vote, which shall be equal to the vote of every other member of the Commission.

''(d) DUTIES OF THE COMMISSION.—

''(1) IN GENERAL.—The Commission shall be responsible for examining the nature, causes, and consequences of, and the accuracy of available data on, the United States merchandise trade and current account deficits.

''(2) ISSUES TO BE ADDRESSED.—The Commission shall examine and report to the President, the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and other appropriate committees of Congress on the following:

''(A) The relationship of the merchandise trade and current account balances to the overall well-being of the United States economy, and to wages and employment in various sectors of the United States economy.

''(B) The impact that United States monetary and fiscal policies may have on United States merchandise trade and current account deficits.

''(C) The extent to which the coordination, allocation, and accountability of trade responsibilities among Federal agencies may contribute to the trade and current account deficits.

''(D) The causes and consequences of the merchandise trade and current account deficits and specific bilateral trade deficits, including—

''(i) identification and quantification of—

''(I) the macroeconomic factors and bilateral trade barriers that may contribute to the United States merchandise trade and current account deficits;

''(II) any impact of the merchandise trade and current account deficits on the domestic economy, industrial base, manufacturing capacity, technology, number and quality of jobs, productivity, wages, and the United States standard of living;

''(III) any impact of the merchandise trade and current account deficits on the defense production and innovation capabilities of the United States; and

''(IV) trade deficits within individual industrial, manufacturing, and production sectors, and any relationship between such deficits and the increasing volume of intra-industry and intra-company transactions;

''(ii) a review of the adequacy and accuracy of the current collection and reporting of import and export data, and the identification and development of additional data bases and economic measurements that may be needed to properly quantify the merchandise trade and current account balances, and any impact the merchandise trade and current account balances may have on the United States economy; and

''(iii) the extent to which there is reciprocal market access substantially equivalent to that afforded by the United States in each country with which the United States has a persistent and substantial bilateral trade deficit, and the extent to which such deficits have become structural.

''(E) Any relationship of United States merchandise trade and current account deficits to both comparative and competitive trade advantages within the global economy, including—

''(i) a systematic analysis of the United States trade patterns with different trading partners and to what extent the trade patterns are based on comparative and competitive trade advantages;

''(ii) the extent to which the increased mobility of capital and technology has changed both comparative and competitive trade advantages;

''(iii) any impact that labor, environmental, or health and safety standards may have on comparative and competitive trade advantages;

''(iv) the effect that offset and technology transfer agreements have on the long-term competitiveness of the United States manufacturing sectors; and

''(v) any effect that international trade, labor, environmental, or other agreements may have on United States competitiveness.

''(F) The extent to which differences in the growth rates of the United States and its trading partners may impact on United States merchandise trade and current account deficits.

''(G) The impact that currency exchange rate fluctuations and any manipulation of exchange rates may have on United States merchandise trade and current account deficits.

''(H) The flow of investments both into and out of the United States, including—

''(i) any consequences for the United States economy of the current status of the United States as a debtor nation;

''(ii) any relationship between such investment flows and the United States merchandise trade and current account deficits and living standards of United States workers;

''(iii) any impact such investment flows may have on United States labor, community, environmental, and health and safety standards, and how such investment flows influence the location of manufacturing facilities; and

''(iv) the effect of barriers to United States foreign direct investment in developed and developing nations, particularly nations with which the United States has a merchandise trade and current account deficit.

''(e) FINAL REPORT.—

''(1) IN GENERAL.—Not later than 15 months after the date of the initial meeting of the Commission, the Commission shall submit to the President and Congress a final report which contains—

''(A) the findings and conclusions of the Commission described in subsection (d); and

''(B) recommendations for addressing the problems identified as part of the Commission's analysis.

''(2) SEPARATE VIEWS.—Any member of the Commission may submit additional findings and recommendations as part of the final report.

''(f) POWERS OF COMMISSION.—

''(1) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission may find advisable to fulfill the requirements of this section. The Commission shall hold at least 1 or more hearings in Washington, D.C., and 4 in different regions of the United States.

''(2) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this section. Upon request of the Chairperson of the Commission, the head of such department or agency shall furnish such information to the Commission.

''(3) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

''(g) COMMISSION PERSONNEL MATTERS.—

''(1) COMPENSATION OF MEMBERS.—Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

''(2) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

''(3) STAFF.—

''(A) IN GENERAL.—The Chairperson of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

''(B) COMPENSATION.—The Chairperson of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

''(4) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

''(5) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

''(6) APPLICABILITY OF CERTAIN PAY AUTHORITIES.—An individual who is a member of the Commission and is an annuitant or otherwise covered by section 8344 or 8468 of title 5, United States Code, by reason of membership on the Commission is not subject to the provisions of section 8344 or 8468 (whichever is applicable) with respect to such membership.

''(h) SUPPORT SERVICES.—The Administrator of the General Services Administration shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

''(i) APPROPRIATIONS.—There are appropriated $2,000,000 to the Commission to carry out the provisions of this section. Amounts appropriated pursuant to this subsection shall remain available until the date which is 90 days after the date on which the Commission submits the final report described in subsection (e).

''(j) FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App.) shall not apply to the Commission.

''(k) TERMINATION.—The Commission shall terminate 90 days after the date on which the Commission submits the final report under subsection (e).''

PART 7—UNITED STATES INTERNATIONAL TRADE COMMISSION

§ 2231. Change of name

(a) Former United States Tariff Commission

The United States Tariff Commission (established by section 1330 of this title) is renamed as the United States International Trade Commission.

(b) References in law and other documents

Any reference in any law of the United States, or in any order, rule, regulation, or other document, to the United States Tariff Commission (or the Tariff Commission) shall be considered to refer to the United States International Trade Commission.

(Pub. L. 93–618, title I, § 171, Jan. 3, 1975, 88 Stat. 2009.)

§ 2232. Independent budget and authorization of appropriations

Effective with respect to the fiscal year beginning October 1, 1976, for purposes of chapter 11 of title 31, estimated expenditures and proposed appropriations for the United States International Trade Commission shall be transmitted to the President on or before October 15 of the year preceding the beginning of each fiscal year and shall be included by him in the Budget without revision, and the Commission shall not be considered to be a department or establishment for purposes of such chapter.

(Pub. L. 93–618, title I, § 175(a)(1), Jan. 3, 1975, 88 Stat. 2011.)

CODIFICATION

''Chapter 11 of title 31'' and ''such chapter'' substituted in text for ''the Budget and Accounting Act, 1921 (31 U.S.C. 1 et seq.)'' and ''such Act'', respectively, on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PART 8—IDENTIFICATION OF MARKET BARRIERS AND CERTAIN UNFAIR TRADE ACTIONS

§ 2241. Estimates of barriers to market access

(a) National trade estimates

(1) In general

For calendar year 1988, and for each succeeding calendar year, the United States Trade Representative, through the interagency trade organization established pursuant to section 1872(a) of this title and with the assistance of the interagency advisory committee established under section 2171(d)(2) of this title, shall—

(A) identify and analyze acts, policies, or practices of each foreign country which constitute significant barriers to, or distortions of—

(i) United States exports of goods or services (including agricultural commodities; and property protected by trademarks, patents, and copyrights exported or licensed by United States persons),

(ii) foreign direct investment by United States persons, especially if such investment has implications for trade in goods or services;[1] and

(iii) United States electronic commerce,[2]

(B) make an estimate of the trade-distorting impact on United States commerce of any act, policy, or practice identified under subparagraph (A); and

(C) make an estimate, if feasible, of—

(i) the value of additional goods and services of the United States,

(ii) the value of additional foreign direct investment by United States persons, and

(iii) the value of additional United States electronic commerce,

that would have been exported to, or invested in or transacted with,,[3] each foreign country during such calendar year if each of such acts, policies, and practices of such country did not exist.

(2) Certain factors taken into account in making analysis and estimate

In making any analysis or estimate under paragraph (1), the Trade Representative shall take into account—

(A) the relative impact of the act, policy, or practice on United States commerce;

(B) the availability of information to document prices, market shares, and other matters necessary to demonstrate the effects of the act, policy, or practice;

(C) the extent to which such act, policy, or practice is subject to international agreements to which the United States is a party;

(D) any advice given through appropriate committees established pursuant to section 2155 of this title; and

(E) the actual increase in—

(i) the value of goods and services of the United States exported to,

(ii) the value of foreign direct investment made in, and

(iii) the value of electronic commerce transacted with,

the foreign country during the calendar year for which the estimate under paragraph (1)(C) is made.

(3) Annual revisions and updates

The Trade Representative shall annually revise and update the analysis and estimate under paragraph (1).

(b) Reports

(1) In general

On or before April 30, 1989, and on or before March 31 of each succeeding calendar year, the Trade Representative shall submit a report on the analysis and estimates made under subsection (a) of this section for the calendar year preceding such calendar year (which shall be known as the ''National Trade Estimate'') to the President, the Committee on Finance of the Senate, and appropriate committees of the House of Representatives.

(2) Reports to include information with respect to action being taken

The Trade Representative shall include in each report submitted under paragraph (1) information with respect to any action taken (or the reasons for no action taken) to eliminate any act, policy, or practice identified under subsection (a), including, but not limited to—

(A) any action under section 2411 of this title,

(B) negotiations or consultations with foreign governments, or

(C) a section on foreign anticompetitive practices, the toleration of which by foreign governments is adversely affecting exports of United States goods or services.

(3) Consultation with Congress on trade policy priorities

The Trade Representative shall keep the committees described in paragraph (1) currently informed with respect to trade policy priorities for the purposes of expanding market opportunities. After the submission of the report required by paragraph (1), the Trade Representative shall also consult periodically with, and take into account the views of, the committees described in that paragraph regarding means to address the foreign trade barriers identified in the report, including the possible initiation of investigations under section 2412 of this title or other trade actions.

(c) Assistance of other agencies

(1) Furnishing of information

The head of each department or agency of the executive branch of the Government, including any independent agency, is authorized and directed to furnish to the Trade Representative or to the appropriate agency, upon request, such data, reports, and other information as is necessary for the Trade Representative to carry out his functions under this section. In preparing the section of the report required by subsection (b)(2)(C) of this section, the Trade Representative shall consult in particular with the Attorney General.

(2) Restrictions on release or use of information

Nothing in this subsection shall authorize the release of information to, or the use of information by, the Trade Representative in a manner inconsistent with law or any procedure established pursuant thereto.

(3) Personnel and services

The head of any department, agency, or instrumentality of the United States may detail such personnel and may furnish such services, with or without reimbursement, as the Trade Representative may request to assist in carrying out his functions.

(d) Electronic commerce

For purposes of this section, the term ''electronic commerce'' has the meaning given that term in section 1104(3)[4] of the Internet Tax Freedom Act.

(Pub. L. 93–618, title I, §181, as added Pub. L. 98–573, title III, §303(a), Oct. 30, 1984, 98 Stat.

[1] So in original. The semicolon probably should be a comma.

[2] So in original. The comma probably should be a semicolon.

[3] So in original.

[4] So in original. See References in Text note below.

3001; amended Pub. L. 100–418, title I, §1304, Aug. 23, 1988, 102 Stat. 1181; Pub. L. 103–465, title III, §§311(a), 312, Dec. 8, 1994, 108 Stat. 4938; Pub. L. 105–277, div. C, title XII, §1202, Oct. 21, 1998, 112 Stat. 2681–726.)

REFERENCES IN TEXT

Section 1104(3) of the Internet Tax Freedom Act, referred to in subsec. (d), was redesignated section 1105(3) of the Act by Pub. L. 108–435, §3(1), Dec. 3, 2004, 118 Stat. 2616, and is set out in a note under section 151 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

AMENDMENTS

1998—Subsec. (a)(1)(A)(iii). Pub. L. 105–277, §1202(1)(A), added cl. (iii).

Subsec. (a)(1)(C). Pub. L. 105–277, §1202(1)(B), added cl. (iii) and inserted ''or transacted with,'' after ''or invested in'' in concluding provisions.

Subsec. (a)(2)(E)(iii). Pub. L. 105–277, §1202(2), added cl. (iii).

Subsec. (d). Pub. L. 105–277, §1202(3), added subsec. (d).

1994—Subsec. (b)(2)(C). Pub. L. 103–465, §311(a)(1), added subpar. (C).

Subsec. (b)(3). Pub. L. 103–465, §312, inserted at end ''After the submission of the report required by paragraph (1), the Trade Representative shall also consult periodically with, and take into account the views of, the committees described in that paragraph regarding means to address the foreign trade barriers identified in the report, including the possible initiation of investigations under section 2412 of this title or other trade actions.''

Subsec. (c)(1). Pub. L. 103–465, §311(a)(2), inserted at end ''In preparing the section of the report required by subsection (b)(2)(C) of this section, the Trade Representative shall consult in particular with the Attorney General.''

1988—Pub. L. 100–418, §1304(a)(10), substituted ''Estimates of'' for ''Actions concerning'' in section catchline.

Subsec. (a)(1). Pub. L. 100–418, §1304(a)(1), substituted ''For calendar year 1988, and for each succeeding calendar year,'' for ''Not later than the date on which the initial report is required under subsection (b)(1) of this section,''.

Pub. L. 100–418, §1304(a)(9), which directed the insertion of ''and with the assistance of the interagency advisory committee established under section 2171(d)(2) of this title,'' after ''section 1872(a) of this title,'' was executed by making the insertion after ''section 1872(a) of this title'' to reflect the probable intent of Congress.

Subsec. (a)(1)(A). Pub. L. 100–418, §1304(a)(2), inserted ''of each foreign country'' after ''or practices''.

Subsec. (a)(1)(C). Pub. L. 100–418, §1304(a)(3)–(5), added subpar. (C).

Subsec. (a)(2)(E). Pub. L. 100–418, §1304(a)(6)–(8), added subpar. (E).

Subsec. (b)(1). Pub. L. 100–418, §1304(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''On or before the date which is one year after October 30, 1984, and each year thereafter, the Trade Representative shall submit the analysis and estimate under subsection (a) of this section to the Committee on Finance of the Senate and to the Committee on Ways and Means of the House of Representatives.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 316 of Pub. L. 103–465, set out as an Effective Date note under section 3581 of this title.

SEVERABILITY

Pub. L. 105–277, div. C, title XII, §1206, Oct. 21, 1998, 112 Stat. 2681–728, provided that: ''If any provision of this title [amending this section and enacting provisions set out under this section], or any amendment made by this title, or the application of that provision to any person or circumstance, is held by a court of competent jurisdiction to violate any provision of the Constitution of the United States, then the other provisions of that title, and the application of that provision to other persons and circumstances, shall not be affected.''

CONSTRUCTION OF 1998 AMENDMENTS

Pub. L. 105–277, div. C, title XII, §1204, Oct. 21, 1998, 112 Stat. 2681–728, provided that: ''Nothing in this title [amending this section and enacting provisions set out under this section] shall be construed to expand the duty of any person to collect or pay taxes beyond that which existed immediately before the date of the enactment of this Act [Oct. 21, 1998].''

Pub. L. 105–277, div. C, title XII, §1205, Oct. 21, 1998, 112 Stat. 2681–728, provided that: ''Nothing in this title [amending this section and enacting provisions set out under this section] shall limit or otherwise affect the implementation of the Telecommunications Act of 1996 (Public Law 104–104) [see Short Title of 1996 Amendment note set out under section 609 of Title 47, Telegraphs, Telephones, and Radiotelegraphs] or the amendments made by such Act.''

DECLARATION THAT THE INTERNET SHOULD BE FREE OF FOREIGN TARIFFS, TRADE BARRIERS, AND OTHER RESTRICTIONS

Pub. L. 105–277, div. C, title XII, §1203, Oct. 21, 1998, 112 Stat. 2681–727, provided that:

''(a) IN GENERAL.—It is the sense of Congress that the President should seek bilateral, regional, and multilateral agreements to remove barriers to global electronic commerce through the World Trade Organization, the Organization for Economic Cooperation and Development, the Trans-Atlantic Economic Partnership, the Asia Pacific Economic Cooperation forum, the Free Trade Area of the America, the North American Free Trade Agreement, and other appropriate venues.

''(b) NEGOTIATING OBJECTIVES.—The negotiating objectives of the United States shall be—

''(1) to assure that electronic commerce is free from—

''(A) tariff and nontariff barriers;

''(B) burdensome and discriminatory regulation and standards; and

''(C) discriminatory taxation; and

''(2) to accelerate the growth of electronic commerce by expanding market access opportunities for—

''(A) the development of telecommunications infrastructure;

''(B) the procurement of telecommunications equipment;

''(C) the provision of Internet access and telecommunications services; and

''(D) the exchange of goods, services, and digitalized information.

''(c) ELECTRONIC COMMERCE.—For purposes of this section, the term 'electronic commerce' has the meaning given that term in section 1104(3) [probably means Pub. L. 105–277, div. C, title XI, §1105(3), set out in a note under section 151 of Title 47, Telegraphs, Telephones, and Radiotelegraphs].''

§ 2242. Identification of countries that deny adequate protection, or market access, for intellectual property rights

(a) In general

By no later than the date that is 30 days after the date on which the annual report is submitted to Congressional committees under section 2241(b) of this title, the United States Trade Representative (hereafter in this section referred to as the ''Trade Representative'') shall identify—

(1) those foreign countries that—

(A) deny adequate and effective protection of intellectual property rights, or

(B) deny fair and equitable market access to United States persons that rely upon intellectual property protection, and

(2) those foreign countries identified under paragraph (1) that are determined by the Trade Representative to be priority foreign countries.

(b) Special rules for identifications

(1) In identifying priority foreign countries under subsection (a)(2) of this section, the Trade Representative shall only identify those foreign countries—

(A) that have the most onerous or egregious acts, policies, or practices that—

(i) deny adequate and effective intellectual property rights, or

(ii) deny fair and equitable market access to United States persons that rely upon intellectual property protection,

(B) whose acts, policies, or practices described in subparagraph (A) have the greatest adverse impact (actual or potential) on the relevant United States products, and

(C) that are not—

(i) entering into good faith negotiations, or

(ii) making significant progress in bilateral or multilateral negotiations,

to provide adequate and effective protection of intellectual property rights.

(2) In identifying priority foreign countries under subsection (a)(2) of this section, the Trade Representative shall—

(A) consult with the Register of Copyrights, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, other appropriate officers of the Federal Government, and

(B) take into account information from such sources as may be available to the Trade Representative and such information as may be submitted to the Trade Representative by interested persons, including information contained in reports submitted under section 2241(b) of this title and petitions submitted under section 2412 of this title.

(3) The Trade Representative may identify a foreign country under subsection (a)(1)(B) of this section only if the Trade Representative finds that there is a factual basis for the denial of fair and equitable market access as a result of the violation of international law or agreement, or the existence of barriers, referred to in subsection (d)(3) of this section.

(4) In identifying foreign countries under paragraphs (1) and (2) of subsection (a) of this section, the Trade Representative shall take into account—

(A) the history of intellectual property laws and practices of the foreign country, including any previous identification under subsection (a)(2) of this section, and

(B) the history of efforts of the United States, and the response of the foreign country, to achieve adequate and effective protection and enforcement of intellectual property rights.

(c) Revocations and additional identifications

(1) The Trade Representative may at any time—

(A) revoke the identification of any foreign country as a priority foreign country under this section, or

(B) identify any foreign country as a priority foreign country under this section,

if information available to the Trade Representative indicates that such action is appropriate.

(2) The Trade Representative shall include in the semiannual report submitted to the Congress under section 2419(3) of this title a detailed explanation of the reasons for the revocation under paragraph (1) of the identification of any foreign country as a priority foreign country under this section.

(d) Definitions

For purposes of this section—

(1) The term ''persons that rely upon intellectual property protection'' means persons involved in—

(A) the creation, production or licensing of works of authorship (within the meaning of sections 102 and 103 of title 17) that are copyrighted, or

(B) the manufacture of products that are patented or for which there are process patents.

(2) A foreign country denies adequate and effective protection of intellectual property rights if the foreign country denies adequate and effective means under the laws of the foreign country for persons who are not citizens or nationals of such foreign country to secure, exercise, and enforce rights relating to patents, process patents, registered trademarks, copyrights and mask works.

(3) A foreign country denies fair and equitable market access if the foreign country effectively denies access to a market for a product protected by a copyright or related right, patent, trademark, mask work, trade secret, or plant breeder's right, through the use of laws, procedures, practices, or regulations which—

(A) violate provisions of international law or international agreements to which both the United States and the foreign country are parties, or

(B) constitute discriminatory nontariff trade barriers.

(4) A foreign country may be determined to deny adequate and effective protection of intellectual property rights, notwithstanding the fact that the foreign country may be in compliance with the specific obligations of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 3511(d)(15) of this title.

(e) Publication

The Trade Representative shall publish in the Federal Register a list of foreign countries identified under subsection (a) of this section and shall make such revisions to the list as may be

required by reason of action under subsection (c) of this section.

(f) Special rule for actions affecting United States cultural industries

(1) In general

By no later than the date that is 30 days after the date on which the annual report is submitted to Congressional committees under section 2241(b) of this title, the Trade Representative shall identify any act, policy, or practice of Canada which—

(A) affects cultural industries,

(B) is adopted or expanded after December 17, 1992, and

(C) is actionable under article 2106 of the North American Free Trade Agreement.

(2) Special rules for identifications

For purposes of section 2412(b)(2)(A) of this title, an act, policy, or practice identified under this subsection shall be treated as an act, policy, or practice that is the basis for identification of a country under subsection (a)(2) of this section, unless the United States has already taken action pursuant to article 2106 of the North American Free Trade Agreement in response to such act, policy, or practice. In deciding whether to identify an act, policy, or practice under paragraph (1), the Trade Representative shall—

(A) consult with and take into account the views of representatives of the relevant domestic industries, appropriate committees established pursuant to section 2155 of this title, and appropriate officers of the Federal Government, and

(B) take into account the information from such sources as may be available to the Trade Representative and such information as may be submitted to the Trade Representative by interested persons, including information contained in reports submitted under section 2241(b) of this title.

(3) Cultural industries

For purposes of this subsection, the term ''cultural industries'' means persons engaged in any of the following activities:

(A) The publication, distribution, or sale of books, magazines, periodicals, or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing.

(B) The production, distribution, sale, or exhibition of film or video recordings.

(C) The production, distribution, sale, or exhibition of audio or video music recordings.

(D) The publication, distribution, or sale of music in print or machine readable form.

(E) Radio communications in which the transmissions are intended for direct reception by the general public, and all radio, television, and cable broadcasting undertakings and all satellite programming and broadcast network services.

(g) Annual report

The Trade Representative shall, by not later than the date by which countries are identified under subsection (a) of this section, transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, a report on actions taken under this section during the 12 months preceding such report, and the reasons for such actions, including a description of progress made in achieving improved intellectual property protection and market access for persons relying on intellectual property rights.

(Pub. L. 93–618, title I, §182, as added Pub. L. 100–418, title I, §1303(b), Aug. 23, 1988, 102 Stat. 1179; amended Pub. L. 103–182, title V, §513, Dec. 8, 1993, 107 Stat. 2156; Pub. L. 103–465, title III, §313, Dec. 8, 1994, 108 Stat. 4938; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(8)], Nov. 29, 1999, 113 Stat. 1536, 1501A–584.)

AMENDMENTS

1999—Subsec. (b)(2)(A). Pub. L. 106–113 substituted ''Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office'' for ''Commissioner of Patents and Trademarks''.

1994—Subsec. (b)(4). Pub. L. 103–465, §313(1), added par. (4).

Subsec. (d)(3). Pub. L. 103–465, §313(2)(A), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''A foreign country denies fair and equitable market access if the foreign country effectively denies access to a market for a product protected by a copyright, patent, or process patent through the use of laws, procedures, practices, or regulations which—''.

Subsec. (d)(4). Pub. L. 103–465, §313(2)(B), added par. (4).

Subsec. (g). Pub. L. 103–465, §313(3), added subsec. (g).

1993—Subsec. (f). Pub. L. 103–182 added subsec. (f).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 316 of Pub. L. 103–465, set out as an Effective Date note under section 3581 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 516(a) of Pub. L. 103–182, set out as an Effective Date note under section 3461 of this title.

PROCUREMENT FROM COUNTRIES THAT DENY ADEQUATE AND EFFECTIVE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Pub. L. 101–189, div. A, title VIII, §852, Nov. 29, 1989, 103 Stat. 1517, as amended by Pub. L. 101–510, div. A, title XIII, §1302(a), Nov. 5, 1990, 104 Stat. 1668, provided that it is the sense of Congress that it be a very important consideration in procurement of property, services, or technology by the Department of Defense whether such procurement is from any person of any country which has been identified by the United States Trade Representative as denying adequate and effective protection of intellectual property rights or fair and equitable market access to United States persons that rely upon intellectual property protection.

IDENTIFICATION OF COUNTRIES THAT DENY ADEQUATE AND EFFECTIVE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Section 1303(a) of Pub. L. 100–418 provided that:

''(1) The Congress finds that—

''(A) international protection of intellectual property rights is vital to the international competitiveness of United States persons that rely on protection of intellectual property rights; and

''(B) the absence of adequate and effective protection of United States intellectual property rights, and the denial of fair and equitable market access, seriously impede the ability of the United States persons that rely on protection of intellectual property rights to export and operate overseas, thereby harming the economic interests of the United States.

''(2) The purpose of this section [enacting this section and this note] is to provide for the development of an overall strategy to ensure adequate and effective protection of intellectual property rights and fair and equitable market access for United States persons that rely on protection of intellectual property rights.''

SUBCHAPTER II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

PART 1—POSITIVE ADJUSTMENT BY INDUSTRIES INJURED BY IMPORTS

§ 2251. Action to facilitate positive adjustment to import competition

(a) Presidential action

If the United States International Trade Commission (hereinafter referred to in this part as the ''Commission'') determines under section 2252(b) of this title that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article, the President, in accordance with this part, shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

(b) Positive adjustment to import competition

(1) For purposes of this part, a positive adjustment to import competition occurs when—

(A) the domestic industry—

(i) is able to compete successfully with imports after actions taken under section 2254 of this title terminate, or

(ii) the domestic industry experiences an orderly transfer of resources to other productive pursuits; and

(B) dislocated workers in the industry experience an orderly transition to productive pursuits.

(2) The domestic industry may be considered to have made a positive adjustment to import competition even though the industry is not of the same size and composition as the industry at the time the investigation was initiated under section 2252(b) of this title.

(Pub. L. 93–618, title II, § 201, Jan. 3, 1975, 88 Stat. 2011; Pub. L. 96–39, title I, § 106(b)(3), July 26, 1979, 93 Stat. 193; Pub. L. 98–573, title II, § 249, Oct. 30, 1984, 98 Stat. 2998; Pub. L. 100–418, title I, § 1401(a), Aug. 23, 1988, 102 Stat. 1225.)

AMENDMENTS

1988—Pub. L. 100–418, in amending section generally, substituted provisions relating to action to facilitate positive adjustment to import competition for provisions relating to investigation by International Trade Commission. See section 2252 of this title.

1984—Subsec. (b)(2)(B). Pub. L. 98–573, § 249(1)(A), substituted ''inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and'' for ''inventory, and''.

Subsec. (b)(2)(D). Pub. L. 98–573, § 249(1)(B)–(D), added subpar. (D).

Subsec. (b)(7). Pub. L. 98–573, § 249(2), added par. (7).

1979—Subsec. (b)(6). Pub. L. 96–39 substituted ''subtitles A and B of title VII or section 337 of the Tariff Act of 1930'' for ''the Antidumping Act, 1921, section 303 or 337 of the Tariff Act of 1930''.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1401(c) of Pub. L. 100–418 provided that: ''The amendments made by subsections (a) and (b) [enacting section 2254 of this title and amending sections 1330, 2133, 2251 to 2253, 2274, 2354, and 2703 of this title and provisions set out as a note under section 2112 of this title] shall take effect on the date of the enactment of this Act [Aug. 23, 1988] and shall apply with respect to investigations initiated under chapter 1 of title II of the Trade Act of 1974 [this part] on or after that date. Any petition filed under section 201 of such chapter [19 U.S.C. 2251] before such date of enactment, and with respect to which the United States International Trade Commission did not make a finding before such date with respect to serious injury or the threat thereof, may be withdrawn and refiled, without prejudice, by the petitioner under section 202(a) of such chapter [19 U.S.C. 2252(a)] (as amended by this section).''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective on 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 107 of Pub. L. 96–39, set out as an Effective Date note under section 1671 of this title.

STUDY ON TRADE ADJUSTMENT ASSISTANCE FOR FISHERMEN

Pub. L. 107–210, div. A, title I, § 143, Aug. 6, 2002, 116 Stat. 953, required Secretary of Commerce, not later than 1 year after Aug. 6, 2002, to conduct a study and report to Congress on appropriateness and feasibility of a trade adjustment assistance program for fishermen.

TERM ''INDUSTRY'' TO INCLUDE PRODUCERS LOCATED IN UNITED STATES INSULAR POSSESSIONS

Pub. L. 98–67, title II, § 214(f), Aug. 5, 1983, 97 Stat. 393, provided that: ''For purposes of chapter 1 of title II of the Trade Act of 1974 [this part], the term 'industry' shall include producers located in the United States insular possessions.''

EX. ORD. NO. 11913. COLLECTION OF INFORMATION FOR IMPORT RELIEF AND ADJUSTMENT ASSISTANCE

Ex. Ord. No. 11913, Apr. 26, 1976, 41 F.R. 17721, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including Section 332(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1332(g)), and as President of the United States of America, in order to reduce the reporting burden with respect to the collection of information pursuant to Title II of the Trade Act of 1974 (88 Stat. 2011, 19 U.S.C. 2251 et seq.) and consistent with Chapter 35 of Title 44 of the United States Code, it is hereby ordered as follows:

SECTION 1. Whenever the United States International Trade Commission, in connection with investigations pursuant to Section 201 of the Trade Act of 1974 (19 U.S.C. 2251), collects factual data from firms on their

sales, production, employment, and financial experience, the Commission shall provide such information to the Secretaries of Commerce and Labor.

SEC. 2. The Secretaries of Commerce and Labor shall ensure that the factual data, received pursuant to Section 1, are used solely for the performance of their functions pursuant to Sections 264 and 224, respectively, of the Trade Act of 1974 (19 U.S.C. 2354 and 2274).

GERALD R. FORD.

§ 2252. Investigations, determinations, and recommendations by Commission

(a) Petitions and adjustment plans

(1) A petition requesting action under this part for the purpose of facilitating positive adjustment to import competition may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.

(2) A petition under paragraph (1)—

(A) shall include a statement describing the specific purposes for which action is being sought, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition; and

(B) may—

(i) subject to subsection (d)(1)(C)(i) of this section, request provisional relief under subsection (d)(1) of this section; or

(ii) request provisional relief under subsection (d)(2) of this section.

(3) Whenever a petition is filed under paragraph (1), the Commission shall promptly transmit copies of the petition to the Office of the United States Trade Representative and other Federal agencies directly concerned.

(4) A petitioner under paragraph (1) may submit to the Commission and the United States Trade Representative (hereafter in this part referred to as the ''Trade Representative''), either with the petition, or at any time within 120 days after the date of filing of the petition, a plan to facilitate positive adjustment to import competition.

(5)(A) Before submitting an adjustment plan under paragraph (4), the petitioner and other entities referred to in paragraph (1) that wish to participate may consult with the Trade Representative and the officers and employees of any Federal agency that is considered appropriate by the Trade Representative, for purposes of evaluating the adequacy of the proposals being considered for inclusion in the plan in relation to specific actions that may be taken under this part.

(B) A request for any consultation under subparagraph (A) must be made to the Trade Representative. Upon receiving such a request, the Trade Representative shall confer with the petitioner and provide such assistance, including publication of appropriate notice in the Federal Register, as may be practicable in obtaining other participants in the consultation. No consultation may occur under subparagraph (A) unless the Trade Representative, or his delegate, is in attendance.

(6)(A) In the course of any investigation under subsection (b) of this section, the Commission shall seek information (on a confidential basis, to the extent appropriate) on actions being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

(B) Regardless whether an adjustment plan is submitted under paragraph (4) by the petitioner, if the Commission makes an affirmative determination under subsection (b) of this section, any—

(i) firm in the domestic industry;

(ii) certified or recognized union or group of workers in the domestic industry;

(iii) State or local community;

(iv) trade association representing the domestic industry; or

(v) any other person or group of persons,

may, individually, submit to the Commission commitments regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition.

(7) Nothing in paragraphs (5) and (6) may be construed to provide immunity under the antitrust laws.

(8) The procedures concerning the release of confidential business information set forth in section 332(g) of the Tariff Act of 1930 [19 U.S.C. 1332(g)] shall apply with respect to information received by the Commission in the course of investigations conducted under this part, part 1 of title III of the North American Free Trade Agreement Implementation Act [19 U.S.C. 3351 et seq.], title II of the United States-Jordan Free Trade Area Implementation Act, title III of the United States-Chile Free Trade Agreement Implementation Act, title III of the United States-Singapore Free Trade Agreement Implementation Act, title III of the United States-Australia Free Trade Agreement Implementation Act, title III of the United States-Morocco Free Trade Agreement Implementation Act, title III of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act [19 U.S.C. 4051 et seq.], and title III of the United States-Bahrain Free Trade Agreement Implementation Act. The Commission may request that parties providing confidential business information furnish nonconfidential summaries thereof or, if such parties indicate that the information in the submission cannot be summarized, the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

(b) Investigations and determinations by Commission

(1)(A) Upon the filing of a petition under subsection (a) of this section, the request of the President or the Trade Representative, the resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the Commission shall promptly make an investigation to determine whether an article is being imported into the United States in such increased quantities as to be a substan-

tial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

(B) For purposes of this section, the term ''substantial cause'' means a cause which is important and not less than any other cause.

(2)(A) Except as provided in subparagraph (B), the Commission shall make the determination under paragraph (1) within 120 days (180 days if the petition alleges that critical circumstances exist) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(B) If before the 100th day after a petition is filed under subsection (a)(1) of this section the Commission determines that the investigation is extraordinarily complicated, the Commission shall make the determination under paragraph (1) within 150 days (210 days if the petition alleges that critical circumstances exist) after the date referred to in subparagraph (A).

(3) The Commission shall publish notice of the commencement of any proceeding under this subsection in the Federal Register and shall, within a reasonable time thereafter, hold public hearings at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, to comment on the adjustment plan, if any, submitted under subsection (a) of this section, to respond to the presentations of other parties and consumers, and otherwise to be heard.

(c) Factors applied in making determinations

(1) In making determinations under subsection (b) of this section, the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)—

(A) with respect to serious injury—

(i) the significant idling of productive facilities in the domestic industry,

(ii) the inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit, and

(iii) significant unemployment or underemployment within the domestic industry;

(B) with respect to threat of serious injury—

(i) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment) in the domestic industry,

(ii) the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development,

(iii) the extent to which the United States market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(C) with respect to substantial cause, an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers.

(2) In making determinations under subsection (b) of this section, the Commission shall—

(A) consider the condition of the domestic industry over the course of the relevant business cycle, but may not aggregate the causes of declining demand associated with a recession or economic downturn in the United States economy into a single cause of serious injury or threat of injury; and

(B) examine factors other than imports which may be a cause of serious injury, or threat of serious injury, to the domestic industry.

The Commission shall include the results of its examination under subparagraph (B) in the report submitted by the Commission to the President under subsection (e) of this section.

(3) The presence or absence of any factor which the Commission is required to evaluate in subparagraphs (A) and (B) of paragraph (1) is not necessarily dispositive of whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry.

(4) For purposes of subsection (b) of this section, in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission—

(A) to the extent information is available, shall, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production;

(B) may, in the case of a domestic producer which produces more than one article, treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article; and

(C) may, in the case of one or more domestic producers which produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, and where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

(5) In the course of any proceeding under this subsection, the Commission shall investigate any factor which in its judgment may be contributing to increased imports of the article under investigation. Whenever in the course of its investigation the Commission has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of subtitles A and B of title VII [19 U.S.C. 1671 et seq., 1673 et seq.] or section 337 [19 U.S.C. 1337] of the Tariff Act of 1930, or other remedial provisions of law, the Commission shall promptly notify the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law.

(6) For purposes of this section:

(A)(i) The term ''domestic industry'' means, with respect to an article, the producers as a

whole of the like or directly competitive article or those producers whose collective production of the like or directly competitive article constitutes a major proportion of the total domestic production of such article.

(ii) The term ''domestic industry'' includes producers located in the United States insular possessions.

(B) The term ''significant idling of productive facilities'' includes the closing of plants or the underutilization of production capacity.

(C) The term ''serious injury'' means a significant overall impairment in the position of a domestic industry.

(D) The term ''threat of serious injury'' means serious injury that is clearly imminent.

(d) Provisional relief

(1)(A) An entity representing a domestic industry that produces a perishable agricultural product or citrus product that is like or directly competitive with an imported perishable agricultural product or citrus product may file a request with the Trade Representative for the monitoring of imports of that product under subparagraph (B). Within 21 days after receiving the request, the Trade Representative shall determine if—

(i) the imported product is a perishable agricultural product or citrus product; and

(ii) there is a reasonable indication that such product is being imported into the United States in such increased quantities as to be, or likely to be, a substantial cause of serious injury, or the threat thereof, to such domestic industry.

(B) If the determinations under subparagraph (A)(i) and (ii) are affirmative, the Trade Representative shall request, under section 332(g) of the Tariff Act of 1930 [19 U.S.C. 1332(g)], the Commission to monitor and investigate the imports concerned for a period not to exceed 2 years. The monitoring and investigation may include the collection and analysis of information that would expedite an investigation under subsection (b) of this section.

(C) If a petition filed under subsection (a) of this section—

(i) alleges injury from imports of a perishable agricultural product or citrus product that has been, on the date the allegation is included in the petition, subject to monitoring by the Commission under subparagraph (B) for not less than 90 days; and

(ii) requests that provisional relief be provided under this subsection with respect to such imports;

the Commission shall, not later than the 21st day after the day on which the request was filed, make a determination, on the basis of available information, whether increased imports (either actual or relative to domestic production) of the perishable agricultural product or citrus product are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a like or directly competitive perishable product or citrus product, and whether either—

(I) the serious injury is likely to be difficult to repair by reason of perishability of the like or directly competitive agricultural product; or

(II) the serious injury cannot be timely prevented through investigation under subsection (b) of this section and action under section 2253 of this title.

(D) At the request of the Commission, the Secretary of Agriculture shall promptly provide to the Commission any relevant information that the Department of Agriculture may have for purposes of making determinations and findings under this subsection.

(E) Whenever the Commission makes an affirmative preliminary determination under subparagraph (C), the Commission shall find the amount or extent of provisional relief that is necessary to prevent or remedy the serious injury. In carrying out this subparagraph, the Commission shall give preference to increasing or imposing a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.

(F) The Commission shall immediately report to the President its determination under subparagraph (C) and, if the determination is affirmative, the finding under subparagraph (E).

(G) Within 7 days after receiving a report from the Commission under subparagraph (F) containing an affirmative determination, the President, if he considers provisional relief to be warranted and after taking into account the finding of the Commission under subparagraph (E), shall proclaim such provisional relief that the President considers necessary to prevent or remedy the serious injury.

(2)(A) When a petition filed under subsection (a) of this section alleges that critical circumstances exist and requests that provisional relief be provided under this subsection with respect to imports of the article identified in the petition, the Commission shall, not later than 60 days after the petition containing the request was filed, determine, on the basis of available information, whether—

(i) there is clear evidence that increased imports (either actual or relative to domestic production) of the article are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article; and

(ii) delay in taking action under this part would cause damage to that industry that would be difficult to repair.

(B) If the determinations under subparagraph (A)(i) and (ii) are affirmative, the Commission shall find the amount or extent of provisional relief that is necessary to prevent or remedy the serious injury. In carrying out this subparagraph, the Commission shall give preference to increasing or imposing a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.

(C) The Commission shall immediately report to the President its determinations under subparagraph (A)(i) and (ii) and, if the determinations are affirmative, the finding under subparagraph (B).

(D) Within 30 days after receiving a report from the Commission under subparagraph (C) containing an affirmative determination under subparagraph (A)(i) and (ii), the President, if he

considers provisional relief to be warranted and after taking into account the finding of the Commission under subparagraph (B), shall proclaim, for a period not to exceed 200 days, such provisional relief that the President considers necessary to prevent or remedy the serious injury. Such relief shall take the form of an increase in, or the imposition of, a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.

(3) If provisional relief is proclaimed under paragraph (1)(G) or (2)(D) in the form of an increase, or the imposition of, a duty, the President shall order the suspension of liquidation of all imported articles subject to the affirmative determination under paragraph (1)(C) or paragraph (2)(A), as the case may be, that are entered, or withdrawn from warehouse for consumption, on or after the date of the determination.

(4)(A) Any provisional relief implemented under this subsection with respect to an imported article shall terminate on the day on which—

(i) if such relief was proclaimed under paragraph (1)(G) or (2)(D), the Commission makes a negative determination under subsection (b) of this section regarding injury or the threat thereof by imports of such article;

(ii) action described in section 2253(a)(3)(A) or (C) of this title takes effect under section 2253 of this title with respect to such article;

(iii) a decision by the President not to take any action under section 2253(a) of this title with respect to such article becomes final; or

(iv) whenever the President determines that, because of changed circumstances, such relief is no longer warranted.

(B) Any suspension of liquidation ordered under paragraph (3) with respect to an imported article shall terminate on the day on which provisional relief is terminated under subparagraph (A) with respect to the article.

(C) If an increase in, or the imposition of, a duty that is proclaimed under section 2253 of this title on an imported article is different from a duty increase or imposition that was proclaimed for such an article under this section, then the entry of any such article for which liquidation was suspended under paragraph (3) shall be liquidated at whichever of such rates of duty is lower.

(D) If provisional relief in the form of an increase in, or the imposition of, a duty is proclaimed under this section with respect to an imported article and neither a duty increase nor a duty imposition is proclaimed under section 2253 of this title regarding such article, the entry of any such article for which liquidation was suspended under paragraph (3) may be liquidated at the rate of duty that applied before provisional relief was provided.

(5) For purposes of this subsection:

(A) The term ''citrus product'' means any processed oranges or grapefruit, or any orange or grapefruit juice, including concentrate.

(B) A perishable agricultural product is any agricultural article, including livestock, regarding which the Trade Representative considers action under this section to be appropriate after taking into account—

(i) whether the article has—

(I) a short shelf life,

(II) a short growing season, or

(III) a short marketing period,

(ii) whether the article is treated as a perishable product under any other Federal law or regulation; and

(iii) any other factor considered appropriate by the Trade Representative.

The presence or absence of any factor which the Trade Representative is required to take into account under clause (i), (ii), or (iii) is not necessarily dispositive of whether an article is a perishable agricultural product.

(C) The term ''provisional relief'' means—

(i) any increase in, or imposition of, any duty;

(ii) any modification or imposition of any quantitative restriction on the importation of an article into the United States; or

(iii) any combination of actions under clauses (i) and (ii).

(e) Commission recommendations

(1) If the Commission makes an affirmative determination under subsection (b)(1) of this section, the Commission shall also recommend the action that would address the serious injury, or threat thereof, to the domestic industry and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

(2) The Commission is authorized to recommend under paragraph (1)—

(A) an increase in, or the imposition of, any duty on the imported article;

(B) a tariff-rate quota on the article;

(C) a modification or imposition of any quantitative restriction on the importation of the article into the United States;

(D) one or more appropriate adjustment measures, including the provision of trade adjustment assistance under part 2 of this subchapter; or

(E) any combination of the actions described in subparagraphs (A) through (D).

(3) The Commission shall specify the type, amount, and duration of the action recommended by it under paragraph (1). The limitations set forth in section 2253(e) of this title are applicable to the action recommended by the Commission.

(4) In addition to the recommendation made under paragraph (1), the Commission may also recommend that the President—

(A) initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury or threat; or

(B) implement any other action authorized under law that is likely to facilitate positive adjustment to import competition.

(5) For purposes of making its recommendation under this subsection, the Commission shall—

(A) after reasonable notice, hold a public hearing at which all interested parties shall be provided an opportunity to present testimony and evidence; and

(B) take into account—

(i) the form and amount of action described in paragraph (2)(A), (B), and (C) that would prevent or remedy the injury or threat thereof,

(ii) the objectives and actions specified in the adjustment plan, if any, submitted under subsection (a)(4) of this section,

(iii) any individual commitment that was submitted to the Commission under subsection (a)(6) of this section,

(iv) any information available to the Commission concerning the conditions of competition in domestic and world markets, and likely developments affecting such conditions during the period for which action is being requested, and

(v) whether international negotiations may be constructive to address the injury or threat thereof or to facilitate adjustment.

(6) Only those members of the Commission who agreed to the affirmative determination under subsection (b) of this section are eligible to vote on the recommendation required to be made under paragraph (1) or that may be made under paragraph (3). Members of the Commission who did not agree to the affirmative determination may submit, in the report required under subsection (f) of this section, separate views regarding what action, if any, should be taken under section 2253 of this title.

(f) Report by Commission

(1) The Commission shall submit to the President a report on each investigation undertaken under subsection (b) of this section. The report shall be submitted at the earliest practicable time, but not later than 180 days (240 days if the petition alleges that critical circumstances exist) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(2) The Commission shall include in the report required under paragraph (1) the following:

(A) The determination made under subsection (b) of this section and an explanation of the basis for the determination.

(B) If the determination under subsection (b) of this section is affirmative, the recommendations for action made under subsection (e) of this section and an explanation of the basis for each recommendation.

(C) Any dissenting or separate views by members of the Commission regarding the determination and any recommendation referred to in subparagraphs (A) and (B).

(D) The findings required to be included in the report under subsection (c)(2) of this section.

(E) A copy of the adjustment plan, if any, submitted under section 2251(b)(4) of this title.

(F) Commitments submitted, and information obtained, by the Commission regarding steps that firms and workers in the domestic industry are taking, or plan to take, to facilitate positive adjustment to import competition.

(G) A description of—

(i) the short- and long-term effects that implementation of the action recommended under subection[1] (e) of this section is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers, and

(ii) the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers and the communities where production facilities of such industry are located, and on other domestic industries.

(3) The Commission, after submitting a report to the President under paragraph (1), shall promptly make it available to the public (with the exception of the confidential information obtained under subsection (a)(6)(B) of this section and any other information which the Commission determines to be confidential) and cause a summary thereof to be published in the Federal Register.

(g) Expedited consideration of adjustment assistance petitions

If the Commission makes an affirmative determination under subsection (b)(1) of this section, the Commission shall promptly notify the Secretary of Labor and the Secretary of Commerce of the determination. After receiving such notification—

(1) the Secretary of Labor shall give expedited consideration to petitions by workers in the domestic industry for certification for eligibility to apply for adjustment assistance under part 2 of this subchapter; and

(2) the Secretary of Commerce shall give expedited consideration to petitions by firms in the domestic industry for certification of eligibility to apply for adjustment assistance under part 3 of this subchapter.

(h) Limitations on investigations

(1) Except for good cause determined by the Commission to exist, no investigation for the purposes of this section shall be made with respect to the same subject matter as a previous investigation under this part, unless 1 year has elapsed since the Commission made its report to the President of the results of such previous investigation.

(2) No new investigation shall be conducted with respect to an article that is or has been the subject of an action under section 2253(a)(3)(A), (B), (C), or (E) of this title if the last day on which the President could take action under section 2253 of this title in the new investigation is a date earlier than that permitted under section 2253(e)(7) of this title.

(3)(A) Not later than the date on which the Textiles Agreement enters into force with respect to the United States, the Secretary of Commerce shall publish in the Federal Register a list of all articles that are subject to the Textiles Agreement. An investigation may be conducted under this section concerning imports of any article that is subject to the Textiles Agreement only if the United States has integrated that article into GATT 1994 pursuant to the Textiles Agreement, as set forth in notices published in the Federal Register by the Secretary of Commerce, including the notice published under section 3591 of this title.

(B) For purposes of this paragraph:

(i) The term ''Textiles Agreement'' means the Agreement on Textiles and Clothing referred to in section 3511(d)(4) of this title.

[1] So in original. Probably should be ''subsection''.

(ii) The term ''GATT 1994'' has the meaning given that term in section 3501(1)(B) of this title.

(i) Limited disclosure of confidential business information under protective order

The Commission shall promulgate regulations to provide access to confidential business information under protective order to authorized representatives of interested parties who are parties to an investigation under this section.

(Pub. L. 93–618, title II, § 202, Jan. 3, 1975, 88 Stat. 2014; Pub. L. 100–418, title I, § 1401(a), Aug. 23, 1988, 102 Stat. 1225; Pub. L. 103–182, title III, §§ 315, 317(b), Dec. 8, 1993, 107 Stat. 2107, 2108; Pub. L. 103–465, title III, §§ 301(a)–(d)(2), (4), (e), (f), 302(b)(4)(B), 303(1)–(6), Dec. 8, 1994, 108 Stat. 4932–4934, 4936, 4937; Pub. L. 104–295, § 20(c)(5), Oct. 11, 1996, 110 Stat. 3528; Pub. L. 107–43, title II, § 222, Sept. 28, 2001, 115 Stat. 250; Pub. L. 108–77, title III, § 316, Sept. 3, 2003, 117 Stat. 937; Pub. L. 108–78, title III, § 316, Sept. 3, 2003, 117 Stat. 967; Pub. L. 108–286, title III, § 316, Aug. 3, 2004, 118 Stat. 945; Pub. L. 108–302, title III, § 316, Aug. 17, 2004, 118 Stat. 1120; Pub. L. 109–53, title III, § 316, Aug. 2, 2005, 119 Stat. 492; Pub. L. 109–169, title III, § 316, Jan. 11, 2006, 119 Stat. 3597; Pub. L. 109–283, title III, § 316, Sept. 26, 2006, 120 Stat. 1207; Pub. L. 110–138, title III, § 316, Dec. 14, 2007, 121 Stat. 1483.)

AMENDMENT OF SUBSECTION (a)

Pub. L. 110–138, title I, § 107(a), title III, § 316, Dec. 14, 2007, 121 Stat. 1459, 1483, provided that, effective on the date on which the United States-Peru Trade Promotion Agreement enters into force, subsection (a)(8) of this section is amended in the first sentence by striking ''and'' and by inserting before the period at the end '', and title III of the United States-Peru Trade Promotion Agreement Implementation Act''.

Pub. L. 109–283, title I, § 107(a), title III, § 316, Sept. 26, 2006, 120 Stat. 1195, 1207, provided that, effective on the date on which the United States-Oman Free Trade Agreement enters into force, subsection (a)(8) of this section is amended in the first sentence by striking ''and'' and by inserting before the period at the end '', and title III of the United States-Oman Free Trade Agreement Implementation Act''.

AMENDMENT OF SECTION

For termination of amendment by section 107(c) of Pub. L. 110–138, see Effective and Termination Dates of 2007 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 109–283, see Effective and Termination Dates of 2006 Amendment note below.

For termination of amendment by section 106(c) of Pub. L. 109–169, see Effective and Termination Dates of 2006 Amendment note below.

For termination of amendment by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates of 2005 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 108–302, see Effective and Termination Dates of 2004 Amendments note below.

For termination of amendment by section 106(c) of Pub. L. 108–286, see Effective and Termination Dates of 2004 Amendments note below.

For termination of amendment by section 107(c) of Pub. L. 108–78, see Effective and Termination Dates of 2003 Amendments note below.

For termination of amendment by section 107(c) of Pub. L. 108–77, see Effective and Termination Dates of 2003 Amendments note below.

For termination of amendment by section 404(c) of Pub. L. 107–43, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

The North American Free Trade Agreement Implementation Act, referred to in subsec. (a)(8), is Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2057, as amended. Part 1 of title III of the Act probably means part 1 of subtitle A of title III of the Act, which is classified generally to subpart 1 (§ 3351 et seq.) of part A of subchapter III of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

Title II of the United States-Jordan Free Trade Area Implementation Act, referred to in subsec. (a)(8), is title II of Pub. L. 107–43, Sept. 28, 2001, 115 Stat. 243, which is set out in a note under section 2112 of this title.

Title III of the United States-Chile Free Trade Agreement Implementation Act, referred to in subsec. (a)(8), is title III of Pub. L. 108–77, Sept. 3, 2003, 117 Stat. 909, which is set out in a note under section 3805 of this title.

Title III of the United States-Singapore Free Trade Agreement Implementation Act, referred to in subsec. (a)(8), is title III of Pub. L. 108–78, Sept. 3, 2003, 117 Stat. 948, which is set out in a note under section 3805 of this title.

Title III of the United States-Australia Free Trade Agreement Implementation Act, referred to in subsec. (a)(8), is title III of Pub. L. 108–286, Aug. 3, 2004, 118 Stat. 941, which is set out in a note under section 3805 of this title.

Title III of the United States-Morocco Free Trade Agreement Implementation Act, referred to in subsec. (a)(8), is title III of Pub. L. 108–302, Aug. 17, 2004, 118 Stat. 1116, which is set out in a note under section 3805 of this title.

The Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, referred to in subsec. (a)(8), is Pub. L. 109–53, Aug. 2, 2005, 119 Stat. 462, as amended. Title III of the Act is classified generally to subchapter III (§ 4051 et seq.) of chapter 26 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

Title III of the United States-Bahrain Free Trade Agreement Implementation Act, referred to in subsec. (a)(8), is title III of Pub. L. 109–169, Jan. 11, 2006, 119 Stat. 3593, which is set out in a note under section 3805 of this title.

The Tariff Act of 1930, referred to in subsec. (c)(5), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended. Subtitles A and B of title VII of the Tariff Act of 1930 are classified generally to parts I and II (§ 1671 et seq. and 1673 et seq., respectively) of subtitle IV of chapter 4 of this title. For complete classification of this Act to the Code, see section 1654 of this title and Tables.

AMENDMENTS

2006—Subsec. (a)(8). Pub. L. 109–169, §§ 106(c), 316, in first sentence, temporarily struck out ''and'' before ''title III of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act'' and inserted before period at end '', and title III of the United States-Bahrain Free Trade Agreement Implementation Act''. See Effective and Termination Dates of 2006 Amendment note below.

2005—Subsec. (a)(8). Pub. L. 109–53, §§ 107(d), 316, in first sentence, temporarily struck out ''and'' before ''title III of the United States-Morocco Free Trade Agreement Implementation Act'' and inserted before period at end '', and title III of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act''. See Effective and Termination Dates of 2005 Amendment note below.

2004—Subsec. (a)(8). Pub. L. 108–302, §§107(c), 316, in first sentence, temporarily struck out ''and'' before ''title III of the United States-Australia'' and inserted before period at end '', and title III of the United States-Morocco Free Trade Agreement Implementation Act''. See Effective and Termination Dates of 2004 Amendments note below.

Subsec.(a)(8). Pub. L. 108–286, §§106(c), 316, in first sentence, temporarily struck out ''and'' before ''title III of the United States-Singapore'' and inserted before period at end '', and title III of the United States-Australia Free Trade Agreement Implementation Act''. See Effective and Termination Dates of 2004 Amendments note below.

2003—Subsec. (a)(8). Pub. L. 108–78, §§107(c), 316, in first sentence, temporarily struck out ''and'' before ''title III of the United States-Chile'' and inserted before period at end '', and title III of the United States-Singapore Free Trade Agreement Implementation Act''. See Effective and Termination Dates of 2003 Amendments note below.

Pub. L. 108–77, §§107(c), 316, in first sentence, temporarily struck out ''and'' before ''title II'' and inserted before period at end '', and title III of the United States-Chile Free Trade Agreement Implementation Act''. See Effective and Termination Dates of 2003 Amendments note below.

2001—Subsec. (a)(8). Pub. L. 107–43, in first sentence, temporarily substituted '', part 1'' for ''and part 1'' and inserted before period at end '', and title II of the United States-Jordan Free Trade Area Implementation Act''. See Effective and Termination Dates of 2001 Amendment note below.

1996—Subsec. (d)(4)(A)(i). Pub. L. 104–295 made technical amendment to reference in original act which appears in text as reference to subsection (b) of this section.

1994—Subsec. (a)(2)(B)(ii). Pub. L. 103–465, §303(1), struck out '', or at any time before the 150th day after the date of filing be amended to request,'' after ''request''.

Subsec. (a)(8). Pub. L. 103–465, §301(a), inserted at end ''The Commission may request that parties providing confidential business information furnish nonconfidential summaries thereof or, if such parties indicate that the information in the submission cannot be summarized, the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.''

Subsec. (b)(1)(A). Pub. L. 103–465, §303(2), substituted ''subsection (a)'' for ''subsection (b)''.

Subsec. (b)(2)(A). Pub. L. 103–465, §301(d)(2)(A)(i), inserted ''(180 days if the petition alleges that critical circumstances exist)'' after ''120 days''.

Subsec. (b)(2)(B). Pub. L. 103–465, §301(d)(2)(A)(ii), inserted ''(210 days if the petition alleges that critical circumstances exist)'' after ''150 days''.

Subsec. (b)(3), (4). Pub. L. 103–465, §301(c), added par. (3), struck out former par. (3) which provided time limits on Commission determinations where petitioner alleged existence of critical circumstances, and struck out former par. (4) which provided for notice and hearings on any adjustment plan submitted under subsec. (a) of this section.

Subsec. (c)(1)(B)(i). Pub. L. 103–465, §301(e)(1), inserted ''productivity,'' after ''wages,''.

Subsec. (c)(6). Pub. L. 103–465, §303(5), substituted ''section'' for ''subsection'' in introductory provisions.

Subsec. (c)(6)(A). Pub. L. 103–465, §301(e)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The term 'domestic industry' includes producers located in the United States insular possession.''

Subsec. (c)(6)(C), (D). Pub. L. 103–465, §301(e)(2)(B), added subpars. (C) and (D).

Subsec. (d)(1)(C)(i). Pub. L. 103–465, §303(3)(A), substituted ''subparagraph (B)'' for ''paragraph (2)''.

Subsec. (d)(1)(E), (G). Pub. L. 103–465, §303(3)(B), struck out ''or threat thereof'' after ''the serious injury'' wherever appearing.

Subsec. (d)(2). Pub. L. 103–465, §301(d)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

''(2)(A) The Commission shall, at the same time it makes an affirmative determination under subsection (b)(3)(A) of this section regarding the existence of critical circumstances, find the amount or extent of provisional relief that is appropriate to address such critical circumstances. The Commission shall immediately report to the President each such affirmative determination and finding.

''(B) After receiving a report from the Commission under subparagraph (A), the President shall, within 7 days after the day on which the report is received and after taking into account the finding of the Commission under subparagraph (A), proclaim such provisional relief, if any, that the President considers appropriate to address the critical circumstances.''

Subsec. (d)(3). Pub. L. 103–465, §301(d)(4)(A), substituted ''(2)(D)'' for ''(2)(B)'' and ''paragraph (2)(A)'' for ''subsection (b)(1) of this section''.

Subsec. (d)(4)(A)(i). Pub. L. 103–465, §§301(d)(4)(B), 303(4), inserted ''or (2)(D)'' after ''(1)(G)'' and substituted ''subsection (b) of this section'' for ''section 2253(a) of this title''.

Subsec. (f)(1). Pub. L. 103–465, §301(d)(2)(B), inserted ''(240 days if the petition alleges that critical circumstances exist)'' after ''180 days''.

Subsec. (f)(2)(G)(ii). Pub. L. 103–465, §303(6), substituted ''industry are located'' for ''industry is located''.

Subsec. (h)(2). Pub. L. 103–465, §302(b)(4)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''If an article was the subject of an investigation under this section that resulted in any action described in section 2253(a)(3)(A), (B), (C), or (E) of this title being taken under section 2253 of this title, no other investigation under this part may be initiated with respect to such article while such action is in effect or during the period beginning on the date on which such action terminates that is equal in duration to the period during which such action was in effect.''

Subsec. (h)(3). Pub. L. 103–465, §301(f), added par. (3).

Subsec. (i). Pub. L. 103–465, §301(b), added subsec. (i).

1993—Subsec. (a)(8). Pub. L. 103–182, §317(b), added par. (8).

Subsec. (d)(1)(A). Pub. L. 103–182, §315(1), inserted ''or citrus product'' after ''agricultural product'' wherever appearing.

Subsec. (d)(1)(C). Pub. L. 103–182, §315(2), in cl. (i) and provisions before subcl. (I), inserted ''or citrus product'' after ''agricultural product'' wherever appearing and in provisions before subcl. (I), inserted ''or citrus product'' after ''competitive perishable product''.

Subsec. (d)(5). Pub. L. 103–182, §315(3), (4), added subpar. (A) and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

1988—Pub. L. 100–418, in amending section generally, substituted provisions relating to investigations, determinations and recommendations by Commission for provisions relating to Presidential action after investigations. See section 2253 of this title.

EFFECTIVE AND TERMINATION DATES OF 2007 AMENDMENT

Amendment by Pub. L. 110–138 effective on the date the United States-Peru Trade Promotion Agreement enters into force and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 110–138, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2006 AMENDMENT

Amendment by Pub. L. 109–283 effective on the date on which the United States-Oman Free Trade Agree-

ment enters into force and to cease to be effective on the date on which the Agreement terminates, see section 107(a), (c) of Pub. L. 109–283, set out in a note under section 3805 of this title.

Amendment by Pub. L. 109–169 effective on the date on which the United States-Bahrain Free Trade Agreement enters into force (Aug. 1, 2006) and to cease to be effective on the date on which the Agreement terminates, see section 106(a), (c) of Pub. L. 109–169, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by Pub. L. 109–53 effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on date Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA–DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as an Effective and Termination Dates note under section 4001 of this title.

EFFECTIVE AND TERMINATION DATES OF 2004 AMENDMENTS

Amendment by Pub. L. 108–302 effective on the date on which the United States-Morocco Free Trade Agreement enters into force (July 1, 2005) and to cease to be effective on the date on which the Agreement terminates, see section 107(a), (c) of Pub. L. 108–302, set out in a note under section 3805 of this title.

Amendment by Pub. L. 108–286 effective on the date on which the United States-Australia Free Trade Agreement enters into force (Jan. 1, 2005) and to cease to be effective on the date on which the Agreement terminates, see section 106(a), (c) of Pub. L. 108–286, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENTS

Amendment by Pub. L. 108–78 effective on the date the United States-Singapore Free Trade Agreement enters into force (Jan. 1, 2004), and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 108–78, set out in a note under section 3805 of this title.

Amendment by Pub. L. 108–77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 108–77, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–43 effective on the date the Agreement between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area enters into force (Dec. 17, 2001), and ceases to be effective on the date the Agreement ceases to be in force, see section 404(a), (c), of Pub. L. 107–43, set out in a note under section 2112 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 304 of title III of Pub. L. 103–465 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), this subtitle [subtitle A (§§ 301–304) of title III of Pub. L. 103–465, amending this section and sections 2253 and 2254 of this title] and the amendments made by this subtitle take effect on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995].

''(b) SECTION 301(b).—The amendment made by section 301(b) [amending this section] takes effect on the date of the enactment of this Act [Dec. 8, 1994].''

EFFECTIVE DATES OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 318 of Pub. L. 103–182, set out as an Effective Date note under section 3351 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Aug. 23, 1988, and applicable with respect to investigations initiated under this part on or after that date, see section 1401(c) of Pub. L. 100–418, set out as a note under section 2251 of this title.

URUGUAY ROUND AGREEMENTS: ENTRY INTO FORCE

The Uruguay Round Agreements, including the World Trade Organization Agreement and agreements annexed to that Agreement, as referred to in section 3511(d) of this title, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 3511 of this title.

§ 2253. Action by President after determination of import injury

(a) In general

(1)(A) After receiving a report under section 2252(f) of this title containing an affirmative finding regarding serious injury, or the threat thereof, to a domestic industry, the President shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

(B) The action taken by the President under subparagraph (A) shall be to such extent, and for such duration, subject to subsection (e)(1) of this section, that the President determines to be appropriate and feasible under such subparagraph.

(C) The interagency trade organization established under section 1872(a) of this title shall, with respect to each affirmative determination reported under section 2252(f) of this title, make a recommendation to the President as to what action the President should take under subparagraph (A).

(2) In determining what action to take under paragraph (1), the President shall take into account—

(A) the recommendation and report of the Commission;

(B) the extent to which workers and firms in the domestic industry are—

(i) benefitting from adjustment assistance and other manpower programs, and

(ii) engaged in worker retraining efforts;

(C) the efforts being made, or to be implemented, by the domestic industry (including the efforts included in any adjustment plan or commitment submitted to the Commission under section 2252(a) of this title) to make a positive adjustment to import competition;

(D) the probable effectiveness of the actions authorized under paragraph (3) to facilitate positive adjustment to import competition;

(E) the short- and long-term economic and social costs of the actions authorized under paragraph (3) relative to their short- and long-term economic and social benefits and other considerations relative to the position of the

domestic industry in the United States economy;

(F) other factors related to the national economic interest of the United States, including, but not limited to—

(i) the economic and social costs which would be incurred by taxpayers, communities, and workers if import relief were not provided under this part,

(ii) the effect of the implementation of actions under this section on consumers and on competition in domestic markets for articles, and

(iii) the impact on United States industries and firms as a result of international obligations regarding compensation;

(G) the extent to which there is diversion of foreign exports to the United States market by reason of foreign restraints;

(H) the potential for circumvention of any action taken under this section;

(I) the national security interests of the United States; and

(J) the factors required to be considered by the Commission under section 2252(e)(5) of this title.

(3) The President may, for purposes of taking action under paragraph (1)—

(A) proclaim an increase in, or the imposition of, any duty on the imported article;

(B) proclaim a tariff-rate quota on the article;

(C) proclaim a modification or imposition of any quantitative restriction on the importation of the article into the United States;

(D) implement one or more appropriate adjustment measures, including the provision of trade adjustment assistance under part 2 of this subchapter;

(E) negotiate, conclude, and carry out agreements with foreign countries limiting the export from foreign countries and the import into the United States of such article;

(F) proclaim procedures necessary to allocate among importers by the auction of import licenses quantities of the article that are permitted to be imported into the United States;

(G) initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury or threat thereof;

(H) submit to Congress legislative proposals to facilitate the efforts of the domestic industry to make a positive adjustment to import competition;

(I) take any other action which may be taken by the President under the authority of law and which the President considers appropriate and feasible for purposes of paragraph (1); and

(J) take any combination of actions listed in subparagraphs (A) through (I).

(4)(A) Subject to subparagraph (B), the President shall take action under paragraph (1) within 60 days (50 days if the President has proclaimed provisional relief under section 2252(d)(2)(D) of this title with respect to the article concerned) after receiving a report from the Commission containing an affirmative determination under section 2252(b)(1) of this title (or a determination under such section which he considers to be an affirmative determination by reason of section 1330(d) of this title).

(B) If a supplemental report is requested under paragraph (5), the President shall take action under paragraph (1) within 30 days after the supplemental report is received, except that, in a case in which the President has proclaimed provisional relief under section 2252(d)(2)(D) of this title with respect to the article concerned, action by the President under paragraph (1) may not be taken later than the 200th day after the provisional relief was proclaimed.

(5) The President may, within 15 days after the date on which he receives a report from the Commission containing an affirmative determination under section 2252(b)(1) of this title, request additional information from the Commission. The Commission shall, as soon as practicable but in no event more than 30 days after the date on which it receives the President's request, furnish additional information with respect to the industry in a supplemental report.

(b) Reports to Congress

(1) On the day the President takes action under subsection (a)(1) of this section, the President shall transmit to Congress a document describing the action and the reasons for taking the action. If the action taken by the President differs from the action required to be recommended by the Commission under section 2252(e)(1) of this title, the President shall state in detail the reasons for the difference.

(2) On the day on which the President decides that there is no appropriate and feasible action to take under subsection (a)(1) of this section with respect to a domestic industry, the President shall transmit to Congress a document that sets forth in detail the reasons for the decision.

(3) On the day on which the President takes any action under subsection (a)(1) of this section that is not reported under paragraph (1), the President shall transmit to Congress a document setting forth the action being taken and the reasons therefor.

(c) Implementation of action recommended by Commission

If the President reports under subsection (b)(1) or (2) of this section that—

(1) the action taken under subsection (a)(1) of this section differs from the action recommended by the Commission under section 2252(e)(1) of this title; or

(2) no action will be taken under subsection (a)(1) of this section with respect to the domestic industry;

the action recommended by the Commission shall take effect (as provided in subsection (d)(2) of this section) upon the enactment of a joint resolution described in section 2192(a)(1)(A) of this title within the 90-day period beginning on the date on which the document referred to in subsection (b)(1) or (2) of this section is transmitted to the Congress.

(d) Time for taking effect of certain relief

(1) Except as provided in paragraph (2), any action described in subsection (a)(3)(A), (B), or (C) of this section, that is taken under subsection

(a)(1) of this section shall take effect within 15 days after the day on which the President proclaims the action, unless the President announces, on the date he decides to take such action, his intention to negotiate one or more agreements described in subsection (a)(3)(E) of this section in which case the action under subsection (a)(3)(A), (B), or (C) of this section shall be proclaimed and take effect within 90 days after the date of such decision.

(2) If the contingency set forth in subsection (c) of this section occurs, the President shall, within 30 days after the date of the enactment of the joint resolution referred to in such subsection, proclaim the action recommended by the Commission under section 2252(e)(1) of this title.

(e) Limitations on actions

(1)(A) Subject to subparagraph (B), the duration of the period in which an action taken under this section may be in effect shall not exceed 4 years. Such period shall include the period, if any, in which provisional relief under section 2252(d) of this title was in effect.

(B)(i) Subject to clause (ii), the President, after receiving an affirmative determination from the Commission under section 2254(c) of this title (or, if the Commission is equally divided in its determination, a determination which the President considers to be an affirmative determination of the Commission), may extend the effective period of any action under this section if the President determines that—

(I) the action continues to be necessary to prevent or remedy the serious injury; and

(II) there is evidence that the domestic industry is making a positive adjustment to import competition.

(ii) The effective period of any action under this section, including any extensions thereof, may not, in the aggregate, exceed 8 years.

(2) Action of a type described in subsection (a)(3)(A), (B), or (C) of this section may be taken under subsection (a)(1) of this section, under section 2252(d)(1)(G) of this title, or under section 2252(d)(2)(D) of this title only to the extent the cumulative impact of such action does not exceed the amount necessary to prevent or remedy the serious injury.

(3) No action may be taken under this section which would increase a rate of duty to (or impose a rate) which is more than 50 percent ad valorem above the rate (if any) existing at the time the action is taken.

(4) Any action taken under this section proclaiming a quantitative restriction shall permit the importation of a quantity or value of the article which is not less than the average quantity or value of such article entered into the United States in the most recent 3 years that are representative of imports of such article and for which data are available, unless the President finds that the importation of a different quantity or value is clearly justified in order to prevent or remedy the serious injury.

(5) An action described in subsection (a)(3)(A), (B), or (C) of this section that has an effective period of more than 1 year shall be phased down at regular intervals during the period in which the action is in effect.

(6)(A) The suspension, pursuant to any action taken under this section, of—

(i) subheadings 9802.00.60 or 9802.00.80 of the Harmonized Tariff Schedule of the United States with respect to an article; and

(ii) the designation of any article as an eligible article for purposes of subchapter V of this chapter;

shall be treated as an increase in duty.

(B) No proclamation providing for a suspension referred to in subparagraph (A) with respect to any article may be made by the President, nor may any such suspension be recommended by the Commission under section 2252(e) of this title, unless the Commission, in addition to making an affirmative determination under section 2252(b)(1) of this title, determines in the course of its investigation under section 2252(b) of this title that the serious injury, or threat thereof, substantially caused by imports to the domestic industry producing a like or directly competitive article results from, as the case may be—

(i) the application of subheading 9802.00.60 or subheading 9802.00.80 of the Harmonized Tariff Schedule of the United States; or

(ii) the designation of the article as an eligible article for the purposes of subchapter V of this chapter.

(7)(A) If an article was the subject of an action under subparagraph (A), (B), (C), or (E) of subsection (a)(3) of this section, no new action may be taken under any of those subparagraphs with respect to such article for—

(i) a period beginning on the date on which the previous action terminates that is equal to the period in which the previous action was in effect, or

(ii) a period of 2 years beginning on the date on which the previous action terminates,

whichever is greater.

(B) Notwithstanding subparagraph (A), if the previous action under subparagraph (A), (B), (C), or (E) of subsection (a)(3) of this section with respect to an article was in effect for a period of 180 days or less, the President may take a new action under any of those subparagraphs with respect to such article if—

(i) at least 1 year has elapsed since the previous action went into effect; and

(ii) an action described in any of those subparagraphs has not been taken with respect to such article more than twice in the 5-year period immediately preceding the date on which the new action with respect to such article first becomes effective.

(f) Certain agreements

(1) If the President takes action under this section other than the implemention[1] of agreements of the type described in subsection (a)(3)(E) of this section, the President may, after such action takes effect, negotiate agreements of the type described in subsection (a)(3)(E) of this section, and may, after such agreements take effect, suspend or terminate, in whole or in part, any action previously taken.

(2) If an agreement implemented under subsection (a)(3)(E) of this section is not effective,

[1] So in original. Probably should be ''implementation''.

the President may, consistent with the limitations contained in subsection (e) of this section, take additional action under subsection (a) of this section.

(g) Regulations

(1) The President shall by regulation provide for the efficient and fair administration of all actions taken for the purpose of providing import relief under this part.

(2) In order to carry out an international agreement concluded under this part, the President may prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement. In addition, in order to carry out any agreement of the type described in subsection (a)(3)(E) of this section that is concluded under this part with one or more countries accounting for a major part of United States imports of the article covered by such agreement, including imports into a major geographic area of the United States, the President may issue regulations governing the entry or withdrawal from warehouse of like articles which are the product of countries not parties to such agreement.

(3) Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

(Pub. L. 93–618, title II, § 203, Jan. 3, 1975, 88 Stat. 2015; Pub. L. 96–39, title XI, § 1106(d), July 26, 1979, 93 Stat. 312; Pub. L. 98–573, title II, § 248(a), Oct. 30, 1984, 98 Stat. 2998; Pub. L. 100–418, title I, §§ 1214(j)(2), 1401(a), Aug. 23, 1988, 102 Stat. 1158, 1234; Pub. L. 100–647, title IX, § 9001(a)(2), Nov. 10, 1988, 102 Stat. 3806; Pub. L. 103–465, title III, §§ 301(d)(3), 302(a)–(b)(4)(A), 303(7)–(10), Dec. 8, 1994, 108 Stat. 4933–4937.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (e)(6), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

AMENDMENTS

1994—Subsec. (a)(2)(C). Pub. L. 103–465, § 303(7), substituted ''2252(a)'' for ''2251(b)''.

Subsec. (a)(3)(E). Pub. L. 103–465, § 302(a)(1), struck out ''orderly marketing'' before ''agreements''.

Subsec. (a)(4). Pub. L. 103–465, § 301(d)(3), designated existing provisions as subpar. (A), substituted ''Subject to subparagraph (B), the'' for ''The'', inserted ''(50 days if the President has proclaimed provisional relief under section 2252(d)(2)(D) of this title with respect to the article concerned)'' after ''60 days'', and substituted a period and subpar. (B) for ''; except that if a supplemental report is requested under paragraph (5), the President shall take action under paragraph (1) within 30 days after the supplemental report is received.''

Subsec. (c). Pub. L. 103–465, § 303(8), substituted ''subsection (d)(2)'' for ''subsection (c)(2)'' in concluding provisions.

Subsec. (d)(1). Pub. L. 103–465, § 302(a)(2), substituted ''agreements described in subsection (a)(3)(E) of this section'' for ''orderly marketing agreements''.

Subsec. (e)(1). Pub. L. 103–465, § 302(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''(1)(A) The duration of the period in which action taken under this section may be in effect shall not exceed 8 years.

''(B) If the initial effective period for action taken under this section is less than 8 years, the President may extend the effective period once, but the aggregate of the initial period and the extension may not exceed 8 years.''

Subsec. (e)(2). Pub. L. 103–465, § 303(9), substituted ''of a type described in subsection (a)(3)(A), (B), or (C) of this section may be taken under subsection (a)(1) of this section, under section 2252(d)(1)(G) of this title, or under section 2252(d)(2)(D) of this title'' for ''may be taken under subsection (a)(1)(A), (B), or (C) of this section or under section 2252(d)(2)(B) of this title'' and struck out ''or threat thereof'' after ''the serious injury''.

Subsec. (e)(4), (5). Pub. L. 103–465, § 302(b)(2), (3), amended pars. (4) and (5) generally. Prior to amendment, pars. (4) and (5) read as follows:

''(4) Any action taken under this section proclaiming a quantitative restriction shall permit the importation of a quantity or value of the article which is not less than the quantity or value of such article imported into the United States during the most recent period that is representative of imports of such article.

''(5) To the extent feasible, an effective period of more than 3 years for an action described in subsection (a)(3)(A), (B), or (C) of this section shall be phased down during the period in which the action is taken, with the first reduction taking effect no later than the close of the day which is 3 years after the day on which such action first takes effect.''

Subsec. (e)(6)(B). Pub. L. 103–465, § 303(10), substituted ''section 2252(e) of this title'' for ''subsection (c) of this section'' and ''section 2252(b) of this title'' for ''subsection (a) of this section''.

Subsec. (e)(7). Pub. L. 103–465, § 302(b)(4)(A), added par. (7).

Subsec. (f). Pub. L. 103–465, § 302(a)(3), in heading, substituted ''Certain'' for ''Orderly marketing and other'', in par. (1), substituted ''implementation of agreements of the type described in subsection (a)(3)(E) of this section'' for ''implementation of orderly marketing agreements'' and ''negotiate agreements of the type described in subsection (a)(3)(E) of this section'' for ''negotiate orderly marketing agreements with foreign countries'', and in par. (2), substituted ''agreement implemented under subsection (a)(3)(E) of this section'' for ''orderly marketing agreement implemented under subsection (a) of this section''.

Subsec. (g)(2). Pub. L. 103–465, § 302(a)(4), in first sentence, struck out ''orderly marketing or other'' before ''international'', and in second sentence, substituted ''agreement of the type described in subsection (a)(3)(E) of this section that is'' for ''orderly marketing agreement'' and ''covered by such agreement'' for ''covered by such agreements''.

1988—Pub. L. 100–418, § 1401(a), in amending section generally, substituted provisions relating to action by President after determination of import injury for provisions relating to import relief.

Subsec. (e)(6)(A)(i). Pub. L. 100–418, § 1214(j)(2)(A), as amended by Pub. L. 100–647, § 9001(a)(2)(B)(i), (ii), substituted ''subheadings 9802.00.60 or 9802.00.80 of the Harmonized Tariff Schedule of the United States'' for ''item 806.30 or 807.00 of the Tariff Schedules of the United States''.

Subsec. (e)(6)(B). Pub. L. 100–647, § 9001(a)(2)(A), substituted ''(i) the application'' for ''(A) the application'', and ''(ii) the designation'' for ''(B) the designation''.

Subsec. (e)(6)(B)(i). Pub. L. 100–418, § 1214(j)(2)(B), as amended by Pub. L. 100–647, § 9001(a)(2)(B)(i), (iii), substituted ''subheading 9802.00.60 or subheading 9802.00.80 of the Harmonized Tariff Schedule of the United States'' for ''item 806.30 or item 807.00''.

1984—Subsec. (c)(1). Pub. L. 98–573, § 248(a)(1), substituted provision that the action recommended by the Commission shall take effect upon enactment of a joint resolution described in section 2192(a)(1)(A) of this title for provision that the action recommended by the Commission would take effect upon the adoption by both Houses of Congress, by an affirmative vote of a major-

ity of the Members of each House present and voting under the procedures set forth in section 2192 of this title, of a concurrent resolution disapproving the action taken by the President or his determination not to provide import relief under section 2252(a)(1)(A) of this title.

Subsec. (c)(2). Pub. L. 98–573, §248(a)(2), substituted ''enactment of the joint resolution referred to in paragraph (1)'' for ''adoption of such resolution'' and ''section 2251(d)'' for ''section 2251(b)''.

1979—Subsec. (a)(4). Pub. L. 96–39, §1106(d)(1), substituted ''negotiate, conclude, and carry out'' for ''negotiate''.

Subsec. (b)(1). Pub. L. 96–39, §1106(d)(2)(A), (B), substituted ''On the day the President determines under section 2252 of this title to provide import relief, including announcement of his intention to negotiate an orderly marketing agreement'' for ''On the day on which the President proclaims import relief under this section or announces his intention to negotiate one or more orderly marketing agreements'' and section ''2251(d)(1)(A)'' for ''2251(b)(1)(A)'' of this title.

Subsec. (b)(3). Pub. L. 96–39, §1106(d)(2)(C), added par. (3).

Subsec. (c)(1). Pub. L. 96–39, §1106(d)(3)(A), (B), substituted ''section 2251(d)(1)(A)'' for ''section 2251(b)(1)(A)'' of this title and inserted ''under the procedures set forth in section 2192 of this title'' after ''voting''.

Subsec. (e)(3). Pub. L. 96–39, §1106(d)(4), substituted ''subsection (a) of this section'' for ''subsection (a)(1), (2), (3), or (5) of this section''.

Subsec. (g)(1). Pub. L. 96–39, §1106(d)(5)(A), (B), struck out ''quantitative'' before ''restriction'' and substituted ''pursuant to this section'' for ''pursuant to subsection (a)(3) or (c) of this section''.

Subsec. (g)(2). Pub. L. 96–39, §1106(d)(6), inserted references to subsec. (e)(3) of this section.

Subsec. (h)(3). Pub. L. 96–39, §1106(d)(7)(A), (B), inserted reference to subsec. (i)(3) of this section and substituted ''one period of not more than 3 years'' for ''one 3-year period''.

Subsec. (h)(4). Pub. L. 96–39, §1106(d)(7)(A), inserted reference to subsec. (i)(3) of this section.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 304(a) of Pub. L. 103–465, set out as a note under section 2252 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–647 applicable as if such amendment took effect on Aug. 23, 1988, see section 9001(b) of Pub. L. 100–647, set out as an Effective and Termination Dates of 1988 Amendments note under section 58c of this title.

Amendment by section 1214(j)(2) of Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.

Amendment by section 1401a of Pub. L. 100–418 effective Aug. 23, 1988, and applicable with respect to investigations initiated under this part on or after that date, see section 1401(c) of Pub. L. 100–418, set out as a note under section 2251 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective on 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective July 26, 1979, see section 1114 of Pub. L. 96–39, set out as an Effective Date note under section 2581 of this title.

STEEL IMPORT STABILIZATION

Title VIII of Pub. L. 98–573, as amended by Pub. L. 100–418, title I, §1322, Aug. 23, 1988, 102 Stat. 1195; Pub. L. 101–221, §§2, 3(a), 4–6(a), Dec. 12, 1989, 103 Stat. 1886–1889, known as the Steel Import Stabilization Act, endorsed principles and goals of steel trade liberalization program as announced by the President on July 25, 1989, and provided for its implementation, granted specific enforcement powers to President to carry out terms and conditions of bilateral arrangements entered into for purposes of implementing that program, made continuation of those powers subject to condition that steel industry continue to modernize its plant and equipment and provide for appropriate worker retraining, directed Secretary of Labor to prepare and submit to Congress plan of action for assisting workers in communities adversely affected by imports of steel products, and provided that section 805 which provided enforcement authority for President would terminate Mar. 31, 1992.

LIMITATION ON MEAT IMPORTS

Pub. L. 88–482, §2, Aug. 22, 1964, 78 Stat. 594, as amended by Pub. L. 96–177, Dec. 31, 1979, 93 Stat. 1291; Pub. L. 100–418, title I, §1214(u), Aug. 23, 1988, 102 Stat. 1162; Pub. L. 100–449, title III, §301(b), Sept. 28, 1988, 102 Stat. 1867; Pub. L. 103–182, title III, §321(a), Dec. 8, 1993, 107 Stat. 2108, provided that this section was to be cited as the ''Meat Import Act of 1979'', defined terms for purposes of this section, limited with exception the aggregate quantity of meat articles which could enter the country in any calendar year after 1979, provided for adjustment of aggregate quantity for calendar years after 1979, required Secretary of Agriculture to estimate and publish yearly aggregate quantity, authorized President to increase or limit by proclamation the total quantity of meat articles entering this country under certain circumstances, and provided for suspension of such proclamations after providing notice in Federal Register and opportunity to comment, prior to repeal by Pub. L. 103–465, title IV, §403, Dec. 8, 1994, 108 Stat. 4959, effective on the date of entry into force of the WTO Agreement with respect to the United States (Jan. 1, 1995).

§ 2254. Monitoring, modification, and termination of action

(a) Monitoring

(1) So long as any action taken under section 2253 of this title remains in effect, the Commission shall monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition.

(2) If the initial period during which the action taken under section 2253 of this title is in effect exceeds 3 years, or if an extension of such action exceeds 3 years, the Commission shall submit a report on the results of the monitoring under paragraph (1) to the President and to the Congress not later than the date that is the midpoint of the initial period, and of each such extension, during which the action is in effect.

(3) In the course of preparing each report under paragraph (2), the Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard.

(4) Upon request of the President, the Commission shall advise the President of its judgment as to the probable economic effect on the industry concerned of any reduction, modification, or termination of the action taken under section 2253 of this title which is under consideration.

(b) Reduction, modification, and termination of action

(1) Action taken under section 2253 of this title may be reduced, modified, or terminated by the

President (but not before the President receives the report required under subsection (a)(2)(A) of this section) if the President—

(A) after taking into account any report or advice submitted by the Commission under subsection (a) of this section and after seeking the advice of the Secretary of Commerce and the Secretary of Labor, determines, on the basis that either—

(i) the domestic industry has not made adequate efforts to make a positive adjustment to import competition, or

(ii) the effectiveness of the action taken under section 2253 of this title has been impaired by changed economic circumstances,

that changed circumstances warrant such reduction, or termination; or

(B) determines, after a majority of the representatives of the domestic industry submits to the President a petition requesting such reduction, modification, or termination on such basis, that the domestic industry has made a positive adjustment to import competition.

(2) Notwithstanding paragraph (1), the President is authorized to take such additional action under section 2253 of this title as may be necessary to eliminate any circumvention of any action previously taken under such section.

(3) Notwithstanding paragraph (1), the President may, after receipt of a Commission determination under section 3538(a)(4) of this title and consulting with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, reduce, modify, or terminate action taken under section 2253 of this title.

(c) Extension of action

(1) Upon request of the President, or upon petition on behalf of the industry concerned filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any action taken under section 2253 of this title is to terminate, the Commission shall investigate to determine whether action under section 2253 of this title continues to be necessary to prevent or remedy serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

(2) The Commission shall publish notice of the commencement of any proceeding under this subsection in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

(3) The Commission shall transmit to the President a report on its investigation and determination under this subsection not later than 60 days before the action under section 2253 of this title is to terminate, unless the President specifies a different date.

(d) Evaluation of effectiveness of action

(1) After any action taken under section 2253 of this title has terminated, the Commission shall evaluate the effectiveness of the actions in facilitating positive adjustment by the domestic industry to import competition, consistent with the reasons set out by the President in the report submitted to the Congress under section 2253(b) of this title.

(2) During the course of the evaluation conducted under paragraph (1), the Commission shall, after reasonable public notice, hold a hearing on the effectiveness of the action. All interested persons shall have the opportunity to attend such hearing and to present evidence or testimony at such hearing.

(3) A report on the evaluation made under paragraph (1) and the hearings held under paragraph (2) shall be submitted by the Commission to the President and to the Congress by no later than the 180th day after the day on which the actions taken under section 2253 of this title terminated.

(e) Other provisions

(1) Action by the President under this part may be taken without regard to the provisions of section 2136(a) of this title but only after consideration of the relation of such actions to the international obligations of the United States.

(2) If the Commission treats as the domestic industry production located in a major geographic area of the United States under section 2252(c)(4)(C) of this title, then the President shall take into account the geographic concentration of domestic production and of imports in that area in taking any action authorized under paragraph (1).

(Pub. L. 93–618, title II, § 204, as added Pub. L. 100–418, title I, § 1401(a), Aug. 23, 1988, 102 Stat. 1238; amended Pub. L. 100–647, title IX, § 9001(a)(8), Nov. 10, 1988, 102 Stat. 3807; Pub. L. 103–465, title I, § 129(a)(7), title III, § 302(c), (d), Dec. 8, 1994, 108 Stat. 4837, 4936.)

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–465, § 302(c)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Commission shall submit a report on the results of the monitoring under paragraph (1) to the President and to the Congress not later than—

''(A) the 2nd-anniversary of the day on which the action under section 2253 of this title first took effect; and

''(B) the last day of each 2-year period occurring after the 2-year period referred to in subparagraph (A).''

Subsec. (a)(4). Pub. L. 103–465, § 302(c)(2), struck out ''extension,'' before ''reduction,''.

Subsec. (b)(3). Pub. L. 103–465, § 129(a)(7), added par. (3).

Subsecs. (c) to (e). Pub. L. 103–465, § 302(d), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectivley.

1988—Subsecs. (c) to (e). Pub. L. 100–647 redesignated subsecs. (d) and (e) as (c) and (d), respectively.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 129(a)(7) of Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 130 of Pub. L. 103–465, set out as an Effective Date note under section 3531 of this title.

Amendment by section 302(c), (d) of Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 304(a) of Pub. L. 103–465, set out as a note under section 2252 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable as if such amendment took effect on Aug. 23, 1988, see section

9001(b) of Pub. L. 100–647, set out as an Effective and Termination Dates of 1988 Amendments note under section 58c of this title.

EFFECTIVE DATE

Section effective Aug. 23, 1988, and applicable with respect to investigations initiated under this part on or after that date, see section 1401(c) of Pub. L. 100–418, set out as an Effective Date of 1988 Amendment note under section 2251 of this title.

PART 2—ADJUSTMENT ASSISTANCE FOR WORKERS

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–210, div. A, title I, §151, Aug. 6, 2002, 116 Stat. 953, as amended by Pub. L. 108–429, title II, §2004(a)(21), Dec. 3, 2004, 118 Stat. 2591, provided that:

''(a) IN GENERAL.—Except as otherwise provided in sections 123(c) [set out as a note under section 2331 of this title], 141(b) [set out as a note under section 2401 of this title], 201(d) [set out as a note under section 35 of Title 26, Internal Revenue Code], and 202(e) [set out as a note under section 6050T of Title 26], and subsections (b), (c), and (d) of this section, the amendments made by this division [enacting sections 1431a, 1583, 2318, and 2401 to 2401g of this title, sections 35, 6050T, and 7527 of Title 26, and section 300gg–45 of Title 42, The Public Health and Welfare, amending sections 58c, 482, 1318, 1330, 1411, 1505, 1509, 2075, 2171, 2271 to 2273, 2275, 2291, 2293, 2295 to 2298, 2317, 2346, and 2395 of this title, sections 4980B, 6103, 6724, and 7213A of Title 26, sections 1165, 2862, 2918, and 2919 of Title 29, Labor, section 1324 of Title 31, Money and Finance, and section 300bb–5 of Title 42, renumbering section 35 of Title 26 as section 36 of Title 26, repealing sections 2318, 2322, and 2331 of this title, enacting provisions set out as notes under sections 58c, 482, 1583, 1625, 1654, 2071, 2075, 2082, 2101, 2251, 2271, 2331, and 2401 of this title, sections 35 and 6050T of Title 26, and section 2918 of Title 29, and amending provisions set out as a note below] shall apply to petitions for certification filed under chapter 2 or 3 of title II of the Trade Act of 1974 [this part and part 3 of this subchapter] on or after the date that is 90 days after the date of enactment of this Act [Aug. 6, 2002].

''(b) WORKERS CERTIFIED AS ELIGIBLE BEFORE EFFECTIVE DATE.—Notwithstanding subsection (a), a worker shall continue to receive (or be eligible to receive) trade adjustment assistance and other benefits under chapter 2 of title II of the Trade Act of 1974 [this part], as in effect on September 30, 2001, for any week for which the worker meets the eligibility requirements of such chapter 2 as in effect on such date, if on or before such date, the worker—

''(1) was certified as eligible for trade adjustment assistance benefits under such chapter as in effect on such date; and

''(2) would otherwise be eligible to receive trade adjustment assistance benefits under such chapter as in effect on such date.

''(c) WORKERS WHO BECAME ELIGIBLE DURING QUALIFIED PERIOD.—

''(1) IN GENERAL.—Notwithstanding subsection (a) or any other provision of law, including section 285 of the Trade Act of 1974 [Pub. L. 93–618, set out as a Termination Date note below], any worker who would have been eligible to receive trade adjustment assistance or other benefits under chapter 2 of title II of the Trade Act of 1974 [this part] during the qualified period if such chapter 2 had been in effect during such period, shall be eligible to receive trade adjustment assistance and other benefits under chapter 2 of title II of the Trade Act of 1974, as in effect on September 30, 2001, for any week during the qualified period for which the worker meets the eligibility requirements of such chapter 2 as in effect on September 30, 2001.

''(2) QUALIFIED PERIOD.—For purposes of this subsection, the term 'qualified period' means the period beginning on January 11, 2002, and ending on the date that is 90 days after the date of enactment of this Act [Aug. 6, 2002].

''(d) ADJUSTMENT ASSISTANCE FOR FIRMS.—

''(1) IN GENERAL.—Notwithstanding subsection (a) or any other provision of law, including section 285 of the Trade Act of 1974 [set out as a Termination Date note below], and except as provided in paragraph (2), any firm that would have been eligible to receive adjustment assistance under chapter 3 of title II of the Trade Act if 1974 [part 3 of this subchapter] during the qualified period if such chapter 3 had been in effect during such period, shall be eligible to receive adjustment assistance under chapter 3 of title II of the Trade Act of 1974, as in effect on September 30, 2001, for any week during the qualified period for which the firm meets the eligibility requirements of such chapter 3 as in effect on September 30, 2001.

''(2) QUALIFIED PERIOD.—For purposes of this subsection, the term 'qualified period' means the period beginning on October 1, 2001, and ending on the date that is 90 days after the date of enactment of this Act [Aug. 6, 2002].''

TERMINATION DATE

Section 285, formerly section 284, of Pub. L. 93–618, title II, Jan. 3, 1975, 88 Stat. 2041; renumbered §285, Pub. L. 96–417, title VI, §613(a), Oct. 10, 1980, 94 Stat. 1746; and amended Pub. L. 97–35, title XXV, §2512, Aug. 13, 1981, 95 Stat. 888; Pub. L. 98–120, §2(b), Oct. 12, 1983, 97 Stat. 809; Pub. L. 99–107, §3, Sept. 30, 1985, 99 Stat. 479; Pub. L. 99–155, §2(b), Nov. 14, 1985, 99 Stat. 814; Pub. L. 99–181, §2, Dec. 13, 1985, 99 Stat. 1172; Pub. L. 99–189, §2, Dec. 18, 1985, 99 Stat. 1184; Pub. L. 99–272, title XIII, §13007(a), Apr. 7, 1986, 100 Stat. 304; Pub. L. 100–418, title I, §1426(a), Aug. 23, 1988, 102 Stat. 1251; Pub. L. 103–66, title XIII, §13803(a)(1), Aug. 10, 1993, 107 Stat. 668; Pub. L. 103–182, title V, §505, Dec. 8, 1993, 107 Stat. 2152; Pub. L. 105–277, div. J, title I, §1012(d), Oct. 21, 1998, 112 Stat. 2681–901; Pub. L. 106–113, div. B, §1000(a)(5) [title VII, §702(d)], Nov. 29, 1999, 113 Stat. 1536, 1501A–319; Pub. L. 107–210, div. A, title I, §111(c), Aug. 6, 2002, 116 Stat. 936; Pub. L. 110–89, §1(d), Sept. 28, 2007, 121 Stat. 982, provided that:

''(a) ASSISTANCE FOR WORKERS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), trade adjustment assistance, vouchers, allowances, and other payments or benefits may not be provided under chapter 2 [this part] after December 31, 2007.

''(2) EXCEPTION.—Notwithstanding paragraph (1), a worker shall continue to receive trade adjustment assistance benefits and other benefits under chapter 2 for any week for which the worker meets the eligibility requirements of that chapter, if on or before December 31, 2007, the worker is—

''(A) certified as eligible for trade adjustment assistance benefits under chapter 2 of this title [this part]; and

''(B) otherwise eligible to receive trade adjustment assistance benefits under chapter 2.

''(b) OTHER ASSISTANCE.—

''(1) ASSISTANCE FOR FIRMS.—Technical assistance may not be provided under chapter 3 [part 3 of this subchapter] after December 31, 2007.

''(2) ASSISTANCE FOR FARMERS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), adjustment assistance, vouchers, allowances, and other payments or benefits may not be provided under chapter 6 [part 6 of this subchapter] after December 31, 2007.

''(B) EXCEPTION.—Notwithstanding subparagraph (A), an agricultural commodity producer (as defined in section 291(2) [19 U.S.C. 2401(2)]) shall continue to receive adjustment assistance benefits and other benefits under chapter 6, for any week for which the agricultural commodity producer meets the eligibility requirements of chapter 6, if on or before December 31, 2007, the agricultural commodity producer is—

''(i) certified as eligible for adjustment assistance benefits under chapter 6; and

''(ii) is otherwise eligible to receive adjustment assistance benefits under such chapter 6.''

[Amendment by Pub. L. 110–89 to section 285 of Pub. L. 93–618, set out above, effective Oct. 1, 2007, see section 1(e) of Pub. L. 110–89, set out as an Effective Date of 2007 Amendment note under section 2317 of this title.]

[Amendment by Pub. L. 106–113 to section 285 of Pub. L. 93–618, set out above, effective as of July 1, 1999, see section 1000(a)(5) [title VII, § 702(e)] of Pub. L. 106–113, set out as an Effective Date of 1999 Amendment note under section 2317 of this title.]

[Amendment by Pub. L. 103–182 to section 285 of Pub. L. 93–618, set out above, effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 506(a) of Pub. L. 103–182, set out as an Effective Date of 1993 Amendment note under section 2271 of this title.]

[Parts 2 and 3 of this subchapter applicable as if amendments by sections 13007 and 13008 of Pub. L. 99–272, amending section 285 of Pub. L. 93–618, set out above, and sections 2317 and 2346 of this title, had taken effect Dec. 18, 1985, see section 13009(c) of Pub. L. 99–272, set out as an Effective Date of 1986 Amendment note under section 2291 of this title.]

SUBPART A—PETITIONS AND DETERMINATIONS

§ 2271. Petitions

(a) Filing of petitions; assistance; publication of notice

(1) A petition for certification of eligibility to apply for adjustment assistance for a group of workers under this part may be filed simultaneously with the Secretary and with the Governor of the State in which such workers' firm or subdivision is located by any of the following:

(A) The group of workers (including workers in an agricultural firm or subdivision of any agricultural firm).

(B) The certified or recognized union or other duly authorized representative of such workers.

(C) Employers of such workers, one-stop operators or one-stop partners (as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801)), including State employment security agencies, or the State dislocated worker unit established under title I of such Act [29 U.S.C. 2801 et seq.], on behalf of such workers.

(2) Upon receipt of a petition filed under paragraph (1), the Governor shall—

(A) ensure that rapid response assistance and appropriate core and intensive services (as described in section 134 of the Workforce Investment Act of 1998 (29 U.S.C. 2864)) authorized under other Federal laws are made available to the workers covered by the petition to the extent authorized under such laws; and

(B) assist the Secretary in the review of the petition by verifying such information and providing such other assistance as the Secretary may request.

(3) Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that the Secretary has received the petition and initiated an investigation.

(b) Hearing

If the petitioner, or any other person found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary's publication under subsection (a) of this section a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

(Pub. L. 93–618, title II, § 221, Jan. 3, 1975, 88 Stat. 2019; Pub. L. 99–272, title XIII, § 13002(a), Apr. 7, 1986, 100 Stat. 300; Pub. L. 103–182, title V, § 503(a), Dec. 8, 1993, 107 Stat. 2151; Pub. L. 107–210, div. A, title I, § 112(a), Aug. 6, 2002, 116 Stat. 937; Pub. L. 108–429, title II, § 2004(a)(4), Dec. 3, 2004, 118 Stat. 2590.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsec. (a)(1)(C), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

2004—Subsec. (a)(2)(A). Pub. L. 108–429 substituted ''assistance and appropriate'' for ''assistance, and appropriate''.

2002—Subsec. (a). Pub. L. 107–210 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''A petition for a certification of eligibility to apply for adjustment assistance under this subpart may be filed with the Secretary of Labor (hereinafter in this part referred to as the 'Secretary') by a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) or by their certified or recognized union or other duly authorized representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.''

1993—Subsec. (a). Pub. L. 103–182 substituted ''assistance under this subpart'' for ''assistance under this part''.

1986—Subsec. (a). Pub. L. 99–272 inserted ''(including workers in any agricultural firm or subdivision of an agricultural firm)'' after ''group of workers''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under this part or part 3 of this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding this section.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–182, title V, § 506, Dec. 8, 1993, 107 Stat. 2152, provided that:

''(a) IN GENERAL.—The amendments made by sections 501, 502, 503, 504, and 505 [enacting sections 2322 and 2331 of this title and amending this section, sections 2272, 2273, 2275, 2317, and 2395 of this title, and provisions set out as a note preceding this section] shall take effect on the date the Agreement [North American Free Trade Agreement] enters into force with respect to the United States [Jan. 1, 1994].

''(b) COVERED WORKERS.—

''(1) GENERAL RULE.—Except as provided in paragraph (2), no worker shall be certified as eligible to receive assistance under subchapter D of chapter 2 of title II of the Trade Act of 1974 [former 19 U.S.C. 2331 et seq.] (as added by this subtitle) whose last total or partial separation from a firm (or appropriate subdivision of a firm) occurred before such date of entry into force.

''(2) REACHBACK.—Notwithstanding paragraph (1), any worker—

''(A) whose last total or partial separation from a firm (or appropriate subdivision of a firm) occurs—

''(i) after the date of the enactment of this Act [Dec. 8, 1993], and

''(ii) before such date of entry into force, and

''(B) who would otherwise be eligible to receive assistance under subchapter D of chapter 2 of title II of the Trade Act of 1974,

shall be eligible to receive such assistance in the same manner as if such separation occurred on or after such date of entry into force.''

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding this section.

DECLARATION OF POLICY; SENSE OF CONGRESS

Pub. L. 107–210, div. A, title I, §125, Aug. 6, 2002, 116 Stat. 946, provided that:

''(a) DECLARATION OF POLICY.—Congress reiterates that, under the trade adjustment assistance program under chapter 2 of title II of the Trade Act of 1974 [this part], workers are eligible for transportation, childcare, and healthcare assistance, as well as other related assistance under programs administered by the Department of Labor.

''(b) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Labor, working independently and in conjunction with the States, should, in accordance with section 225 of the Trade Act of 1974 [19 U.S.C. 2275], provide more specific information about benefit allowances, training, and other employment services, and the petition and application procedures (including appropriate filing dates) for such allowances, training, and services, under the trade adjustment assistance program under chapter 2 of title II of the Trade Act of 1974 to workers who are applying for, or are certified to receive, assistance under that program, including information on all other Federal assistance available to such workers.''

§ 2272. Group eligibility requirements; agricultural workers; oil and natural gas industry

(a) In general

A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified by the Secretary as eligible to apply for adjustment assistance under this part pursuant to a petition filed under section 2271 of this title if the Secretary determines that—

(1) a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2)(A)(i) the sales or production, or both, of such firm or subdivision have decreased absolutely;

(ii) imports of articles like or directly competitive with articles produced by such firm or subdivision have increased; and

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm or subdivision; or

(B)(i) there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

(ii)(I) the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

(II) the country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act [19 U.S.C. 3201 et seq.], African Growth and Opportunity Act [19 U.S.C. 3701 et seq.], or the Caribbean Basin Economic Recovery Act [19 U.S.C. 2701 et seq.]; or

(III) there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

(b) Adversely affected secondary workers

A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified by the Secretary as eligible to apply for trade adjustment assistance benefits under this part pursuant to a petition filed under section 2271 of this title if the Secretary determines that—

(1) a significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility under subsection (a) of this section, and such supply or production is related to the article that was the basis for such certification (as defined in subsection (c)(3) and (4) of this section); and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation determined under paragraph (1).

(c) Definitions

For purposes of this section—

(1) The term ''contributed importantly'' means a cause which is important but not necessarily more important than any other cause.

(2)(A) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas shall be considered to be a firm producing oil or natural gas.

(B) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas, or otherwise produces oil or natural gas, shall be considered to be producing articles directly competitive with imports of oil and with imports of natural gas.

(3) DOWNSTREAM PRODUCER.—The term ''downstream producer'' means a firm that performs additional, value-added production processes for a firm or subdivision, including a firm that performs final assembly or finishing, directly for another firm (or subdivision), for articles that were the basis for a certification

of eligibility under subsection (a) of this section of a group of workers employed by such other firm, if the certification of eligibility under subsection (a) of this section is based on an increase in imports from, or a shift in production to, Canada or Mexico.

(4) SUPPLIER.—The term ''supplier'' means a firm that produces and supplies directly to another firm (or subdivision) component parts for articles that were the basis for a certification of eligibility under subsection (a) of this section of a group of workers employed by such other firm.

(Pub. L. 93–618, title II, § 222, Jan. 3, 1975, 88 Stat. 2019; Pub. L. 97–35, title XXV, § 2501, Aug. 13, 1981, 95 Stat. 881; Pub. L. 98–120, § 3(a), Oct. 12, 1983, 97 Stat. 809; Pub. L. 99–272, title XIII, § 13002(a), Apr. 7, 1986, 100 Stat. 300; Pub. L. 100–418, title I, § 1421(a)(1)(A), (b)(1), Aug. 23, 1988, 102 Stat. 1242, 1243; Pub. L. 103–182, title V, § 503(a), Dec. 8, 1993, 107 Stat. 2151; Pub. L. 107–210, div. A, title I, § 113, Aug. 6, 2002, 116 Stat. 937; Pub. L. 108–429, title II, § 2004(a)(5), Dec. 3, 2004, 118 Stat. 2590.)

REFERENCES IN TEXT

The Andean Trade Preference Act, referred to in subsec. (a)(2)(B)(ii)(II), is title II of Pub. L. 102–182, Dec. 4, 1991, 105 Stat. 1236, as amended, which is classified generally to chapter 20 (§ 3201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of this title and Tables.

The African Growth and Opportunity Act, referred to in subsec. (a)(2)(B)(ii)(II), is title I of Pub. L. 106–200, May 18, 2000, 114 Stat. 252, as amended, which is classified principally to chapter 23 (§ 3701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of this title and Tables.

The Caribbean Basin Economic Recovery Act, referred to in subsec. (a)(2)(B)(ii)(II), is title II of Pub. L. 98–67, Aug. 5, 1983, 97 Stat. 384, as amended, which is classified principally to chapter 15 (§ 2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–429 made technical amendment to heading and inserted ''pursuant to a petition filed under section 2271 of this title'' after ''under this part'' in introductory provisions.

2002—Subsec. (a). Pub. L. 107–210, § 113(a)(1)(A), inserted heading and amended text generally. Prior to amendment, text read as follows: ''The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this subpart if he determines—

''(1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

''(2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and

''(3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.''

Subsec. (b). Pub. L. 107–210, § 113(a)(1)(C), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 107–210, § 113(b)(1), substituted ''this section'' for ''subsection (a)(3) of this section'' in introductory provisions.

Pub. L. 107–210, § 113(a)(1)(B), redesignated subsec. (b) as (c).

Subsec. (c)(3), (4). Pub. L. 107–210, § 113(b)(2), added pars. (3) and (4).

1993—Subsec. (a). Pub. L. 103–182 substituted ''assistance under this subpart'' for ''assistance under this part''.

1988—Pub. L. 100–418, § 1421(a)(1)(A), struck out last sentence which defined ''contributed importantly'' for purposes of par. (3), designated remaining provisions as subsec. (a), and added subsec. (b).

Subsec. (a)(3). Pub. L. 100–418, § 1421(b)(1), directed the general amendment of par. (3) adding provisions relating to provision of essential goods or services by such workers' firm, or appropriate subdivision thereof, which amendment did not become effective pursuant to section 1430(d) of Pub. L. 100–418, as amended, set out as an Effective Date note under section 2397 of this title.

1986—Pub. L. 99–272 inserted ''(including workers in any agricultural firm or subdivision of an agricultural firm)'' after ''group of workers''.

1983—Pub. L. 98–120, § 3(a)(2), substituted ''For purposes of paragraph (3), the term 'contributed importantly' means a cause which is important, but not necessarily more important than any other cause'' for ''For purposes of paragraph (3), the term 'substantial cause' means a cause which is important and not less than any other cause'' in provision following par. (3).

Par. (3). Pub. L. 98–120, § 3(a)(1), substituted ''contributed importantly to such total or partial separation, or threat thereof, and to such decline'' for ''were a substantial cause of such total or partial separation, or threat thereof, and of such decline''.

1981—Pub. L. 97–35 substituted provisions defining ''substantial cause'' and applicability of such term in par. (3) for provisions defining ''contributed importantly'' and applicability of such term in par. (3).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under this part or part 3 of this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 506(a) of Pub. L. 103–182, set out as a note under section 2271 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 3(b) of Pub. L. 98–120 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to petitions for certification filed under section 221 of the Trade Act of 1974 [19 U.S.C. 2271] on or after October 1, 1983.''

EFFECTIVE DATE OF 1981 AMENDMENT AND TRANSITION PROVISIONS

Amendment by Pub. L. 97–35 applicable to petitions filed on or after Oct. 1, 1983, with transition provisions applicable, see section 2514 of Pub. L. 97–35, set out as a note under section 2291 of this title.

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

WORKERS COVERED BY CERTIFICATION NOTWITHSTANDING OTHER LAW

Section 1421(a)(1)(B) of Pub. L. 100–418 provided that: ''Notwithstanding section 223(b) of the Trade Act of

1974 [19 U.S.C. 2273(b)], or any other provision of law, any certification made under subchapter A of chapter 2 of title II of such Act [this subpart] which—

''(i) is made with respect to a petition filed before the date that is 90 days after the date of enactment of this Act [Aug. 23, 1988], and

''(ii) would not have been made if the amendments made by subparagraph (A) [amending this section] had not been enacted into law,

shall apply to any worker whose most recent total or partial separation from the firm, or appropriate subdivision of the firm, described in section 222(a) of such Act [19 U.S.C. 2272(a)] occurs after September 30, 1985.''

§ 2273. Determinations by Secretary of Labor

(a) Certification of eligibility

As soon as possible after the date on which a petition is filed under section 2271 of this title, but in any event not later than 40 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section 2272 of this title and shall issue a certification of eligibility to apply for assistance under this subpart covering workers in any group which meets such requirements. Each certification shall specify the date on which the total or partial separation began or threatened to begin.

(b) Workers covered by certification

A certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm before his application under section 2291 of this title occurred—

(1) more than one year before the date of the petition on which such certification was granted, or

(2) more than 6 months before the effective date of this part.

(c) Publication of determination in Federal Register

Upon reaching his determination on a petition, the Secretary shall promptly publish a summary of the determination in the Federal Register together with his reasons for making such determination.

(d) Termination of certification

Whenever the Secretary determines, with respect to any certification of eligibility of the workers of a firm or subdivision of the firm, that total or partial separations from such firm or subdivision are no longer attributable to the conditions specified in section 2272 of this title, he shall terminate such certification and promptly have notice of such termination published in the Federal Register together with his reasons for making such determination. Such termination shall apply only with respect to total or partial separations occurring after the termination date specified by the Secretary.

(Pub. L. 93–618, title II, § 223, Jan. 3, 1975, 88 Stat. 2019; Pub. L. 103–182, title V, § 503(a), Dec. 8, 1993, 107 Stat. 2151; Pub. L. 107–210, div. A, title I, § 112(b), Aug. 6, 2002, 116 Stat. 937.)

REFERENCES IN TEXT

For the effective date of this part, referred to in subsec. (b)(2), see Effective and Termination Date note set out preceding section 2271 of this title.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–210 substituted ''40 days'' for ''60 days''.

1993—Subsec. (a). Pub. L. 103–182 substituted ''assistance under this subpart'' for ''assistance under this part''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under this part or part 3 of this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 506(a) of Pub. L. 103–182, set out as a note under section 2271 of this title.

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2274. Study by Secretary of Labor when International Trade Commission begins investigation

(a) Subject matter of study

Whenever the International Trade Commission (hereafter referred to in this part as the ''Commission'') begins an investigation under section 2252 of this title with respect to an industry, the Commission shall immediately notify the Secretary of such investigation, and the Secretary shall immediately begin a study of—

(1) the number of workers in the domestic industry producing the like or directly competitive article who have been or are likely to be certified as eligible for adjustment assistance, and

(2) the extent to which the adjustment of such workers to the import competition may be facilitated through the use of existing programs.

(b) Report; publication

The report of the Secretary of the study under subsection (a) of this section shall be made to the President not later than 15 days after the day on which the Commission makes its report under section 2252(f) of this title. Upon making his report to the President, the Secretary shall also promptly make it public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

(Pub. L. 93–618, title II, § 224, Jan. 3, 1975, 88 Stat. 2020; Pub. L. 97–35, title XXV, § 2513(a), Aug. 13, 1981, 95 Stat. 889; Pub. L. 100–418, title I, § 1401(b)(1)(B), Aug. 23, 1988, 102 Stat. 1239.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–418 substituted ''section 2252'' for ''section 2251''.

Subsec. (b). Pub. L. 100–418 substituted ''section 2252(f)'' for ''section 2251''.

1981—Subsec. (c). Pub. L. 97–35 struck out subsec. (c) which related to availability of information to workers.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Aug. 23, 1988, and applicable with respect to investigations initiated under part 1 (§ 2251 et seq.) of this subchapter on or after that date, see section 1401(c) of Pub. L. 100–418, set out as a note under section 2251 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT AND TRANSITION PROVISIONS

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, with transition provisions applicable, see section 2514 of Pub. L. 97–35, set out as a note under section 2291 of this title.

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2275. Benefit information for workers

(a) The Secretary shall provide full information to workers about the benefit allowances, training, and other employment services available under this part and about the petition and application procedures, and the appropriate filing dates, for such allowances, training and services. The Secretary shall provide whatever assistance is necessary to enable groups of workers to prepare petitions or applications for program benefits. The Secretary shall make every effort to insure that cooperating State agencies fully comply with the agreements entered into under section 2311(a) of this title and shall periodically review such compliance. The Secretary shall inform the State Board for Vocational Education or equivalent agency and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under section 2273 of this title and of projections, if available, of the needs for training under section 2296 of this title as a result of such certification.

(b)(1) The Secretary shall provide written notice through the mail of the benefits available under this part to each worker whom the Secretary has reason to believe is covered by a certification made under this subpart—

(A) at the time such certification is made, if the worker was partially or totally separated from the adversely affected employment before such certification, or

(B) at the time of the total or partial separation of the worker from the adversely affected employment, if subparagraph (A) does not apply.

(2) The Secretary shall publish notice of the benefits available under this part to workers covered by each certification made under this subpart in newspapers of general circulation in the areas in which such workers reside.

(Pub. L. 93–618, title II, § 225, as added Pub. L. 97–35, title XXV, § 2502, Aug. 13, 1981, 95 Stat. 881; amended Pub. L. 100–418, title I, § 1422, Aug. 23, 1988, 102 Stat. 1244; Pub. L. 103–182, title V, § 503(b), Dec. 8, 1993, 107 Stat. 2151; Pub. L. 107–210, div. A, title I, § 123(b)(1), Aug. 6, 2002, 116 Stat. 944.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–210 struck out ''or subpart D of this part'' after ''this subpart'' in pars. (1) and (2).

1993—Subsec. (b). Pub. L. 103–182 inserted reference to subpart D in pars. (1) and (2).

1988—Pub. L. 100–418 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable with respect to petitions filed under this part on or after the date that is 90 days after Aug. 6, 2002, except with respect to certain workers, see section 123(c) of Pub. L. 107–210, set out as an Effective Date of Repeal note under section 2331 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 506(a) of Pub. L. 103–182, set out as a note under section 2271 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective on date that is 30 days after Aug. 23, 1988, see section 1430(e) of Pub. L. 100–418, set out as an Effective Date note under section 2397 of this title.

EFFECTIVE DATE AND TRANSITION PROVISIONS

Section effective Aug. 13, 1981, with transition provisions applicable, see section 2514 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 2291 of this title.

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

SUBPART B—PROGRAM BENEFITS

Division I—Trade Readjustment Allowances

§ 2291. Qualifying requirements for workers

(a) Trade readjustment allowance conditions

Payment of a trade readjustment allowance shall be made to an adversely affected worker covered by a certification under subpart A of this part who files an application for such allowance for any week of unemployment which begins more than 60 days after the date on which the petition that resulted in such certification was filed under section 2271 of this title, if the following conditions are met:

(1) Such worker's total or partial separation before his application under this part occurred—

(A) on or after the date, as specified in the certification under which he is covered, on which total or partial separation began or threatened to begin in the adversely affected employment,

(B) before the expiration of the 2-year period beginning on the date on which the determination under section 2273 of this title was made, and

(C) before the termination date (if any) determined pursuant to section 2273(d) of this title.

(2) Such worker had, in the 52-week period ending with the week in which such total or

partial separation occurred, at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm or subdivision of a firm, or, if data with respect to weeks of employment with a firm are not available, equivalent amounts of employment computed under regulations prescribed by the Secretary. For the purposes of this paragraph, any week in which such worker—

(A) is on employer-authorized leave for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training,

(B) does not work because of a disability that is compensable under a workmen's compensation law or plan of a State or the United States,

(C) had his employment interrupted in order to serve as a full-time representative of a labor organization in such firm or subdivision, or

(D) is on call-up for purposes of active duty in a reserve status in the Armed Forces of the United States, provided such active duty is ''Federal service'' as defined in section 8521(a)(1) of title 5,

shall be treated as a week of employment at wages of $30 or more, but not more than 7 weeks, in case of weeks described in subparagraph (A) or (C), or both (and not more than 26 weeks, in the case of weeks described in subparagraph (B) or (D)), may be treated as weeks of employment under this sentence.

(3) Such worker—

(A) was entitled to (or would be entitled to if he applied therefor) unemployment insurance for a week within the benefit period (i) in which such total or partial separation took place, or (ii) which began (or would have begun) by reason of the filing of a claim for unemployment insurance by such worker after such total or partial separation;

(B) has exhausted all rights to any unemployment insurance, except additional compensation that is funded by a State and is not reimbursed from any Federal funds, to which he was entitled (or would be entitled if he applied therefor); and

(C) does not have an unexpired waiting period applicable to him for any such unemployment insurance.

(4) Such worker, with respect to such week of unemployment, would not be disqualified for extended compensation payable under the Federal-State Extended Unemployment Compensation Act of 1970 by reason of the work acceptance and job search requirements in section 202(a)(3) of such Act.

(5) Such worker—

(A)(i) is enrolled in a training program approved by the Secretary under section 2296(a) of this title, and

(ii) the enrollment required under clause (i) occurs no later than the latest of—

(I) the last day of the 16th week after the worker's most recent total separation from adversely affected employment which meets the requirements of paragraphs (1) and (2),

(II) the last day of the 8th week after the week in which the Secretary issues a certification covering the worker,

(III) 45 days after the later of the dates specified in subclause (I) or (II), if the Secretary determines there are extenuating circumstances that justify an extension in the enrollment period, or

(IV) the last day of a period determined by the Secretary to be approved for enrollment after the termination of a waiver issued pursuant to subsection (c) of this section,

(B) has, after the date on which the worker became totally separated, or partially separated, from the adversely affected employment, completed a training program approved by the Secretary under section 2296(a) of this title, or

(C) has received a written statement under subsection (c)(1) of this section after the date described in subparagraph (B).

(b) Withholding of trade readjustment allowance pending beginning or resumption of participation in training program; period of applicability

(1) If—

(A) the Secretary determines that—

(i) the adversely affected worker—

(I) has failed to begin participation in the training program the enrollment in which meets the requirement of subsection (a)(5) of this section, or

(II) has ceased to participate in such training program before completing such training program, and

(ii) there is no justifiable cause for such failure or cessation, or

(B) the certification made with respect to such worker under subsection (c)(1) of this section is revoked under subsection (c)(2) of this section,

no trade readjustment allowance may be paid to the adversely affected worker under this division for the week in which such failure, cessation, or revocation occurred, or any succeeding week, until the adversely affected worker begins or resumes participation in a training program approved under section 2296(a) of this title.

(2) The provisions of subsection (a)(5) of this section and paragraph (1) shall not apply with respect to any week of unemployment which begins—

(A) after the date that is 60 days after the date on which the petition that results in the certification that covers the worker is filed under section 2271 of this title, and

(B) before the first week following the week in which such certification is made under subpart A of this part.

(c) Waivers of training requirements

(1) Issuance of waivers

The Secretary may issue a written statement to an adversely affected worker waiving the requirement to be enrolled in training described in subsection (a)(5)(A) of this section if the Secretary determines that it is not fea-

sible or appropriate for the worker, because of 1 or more of the following reasons:

(A) Recall

The worker has been notified that the worker will be recalled by the firm from which the separation occurred.

(B) Marketable skills

The worker possesses marketable skills for suitable employment (as determined pursuant to an assessment of the worker, which may include the profiling system under section 303(j) of the Social Security Act (42 U.S.C. 503(j)), carried out in accordance with guidelines issued by the Secretary) and there is a reasonable expectation of employment at equivalent wages in the foreseeable future.

(C) Retirement

The worker is within 2 years of meeting all requirements for entitlement to either—

(i) old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.) (except for application therefor); or

(ii) a private pension sponsored by an employer or labor organization.

(D) Health

The worker is unable to participate in training due to the health of the worker, except that a waiver under this subparagraph shall not be construed to exempt a worker from requirements relating to the availability for work, active search for work, or refusal to accept work under Federal or State unemployment compensation laws.

(E) Enrollment unavailable

The first available enrollment date for the approved training of the worker is within 60 days after the date of the determination made under this paragraph, or, if later, there are extenuating circumstances for the delay in enrollment, as determined pursuant to guidelines issued by the Secretary.

(F) Training not available

Training approved by the Secretary is not reasonably available to the worker from either governmental agencies or private sources (which may include area career and technical education schools, as defined in section 2302 of title 20, and employers), no training that is suitable for the worker is available at a reasonable cost, or no training funds are available.

(2) Duration of waivers

(A) In general

A waiver issued under paragraph (1) shall be effective for not more than 6 months after the date on which the waiver is issued, unless the Secretary determines otherwise.

(B) Revocation

The Secretary shall revoke a waiver issued under paragraph (1) if the Secretary determines that the basis of a waiver is no longer applicable to the worker and shall notify the worker in writing of the revocation.

(3) Agreements under section 2311

(A) Issuance by cooperating States

Pursuant to an agreement under section 2311 of this title, the Secretary may authorize a cooperating State to issue waivers as described in paragraph (1).

(B) Submission of statements

An agreement under section 2311 of this title shall include a requirement that the cooperating State submit to the Secretary the written statements provided under paragraph (1) and a statement of the reasons for the waiver.

(Pub. L. 93–618, title II, § 231, Jan. 3, 1975, 88 Stat. 2020; Pub. L. 97–35, title XXV, § 2503, Aug. 13, 1981, 95 Stat. 881; Pub. L. 99–272, title XIII, § 13003(a)(1), (2), (b), Apr. 7, 1986, 100 Stat. 300, 301; Pub. L. 100–418, title I, § 1423(a)(1)–(3), Aug. 23, 1988, 102 Stat. 1244, 1245; Pub. L. 102–318, title I, § 106(a), July 3, 1992, 106 Stat. 294; Pub. L. 107–210, div. A, title I, §§ 114, 115, Aug. 6, 2002, 116 Stat. 939; Pub. L. 109–270, § 2(b)(1), Aug. 12, 2006, 120 Stat. 746.)

REFERENCES IN TEXT

The Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsec. (a)(4), is title II of Pub. L. 91–373, Aug. 10, 1970, 84 Stat. 708, as amended, which is classified generally as a note under section 3304 of Title 26, Internal Revenue Code. Section 202(a)(3) of such Act, referred to in subsec. (a)(4), is set out in the note under section 3304 of Title 26. For complete classification of this Act to the Code, see Tables.

The Social Security Act, referred to in subsec. (c)(1)(C)(i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (c)(1)(F). Pub. L. 109–270 substituted ''area career and technical education schools'' for ''area vocational education schools'' and made technical amendment to reference in original act which appears in text as reference to section 2302 of title 20.

2002—Subsec. (a)(3)(B). Pub. L. 107–210, § 114(a), inserted '', except additional compensation that is funded by a State and is not reimbursed from any Federal funds,'' after ''any unemployment insurance''.

Subsec. (a)(5)(A). Pub. L. 107–210, § 114(b), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(5)(C). Pub. L. 107–210, § 115(b), struck out ''certified'' after ''statement''.

Subsec. (c). Pub. L. 107–210, § 115(a), inserted heading and amended text generally, substituting provisions relating to issuance and duration of waivers of training requirements for provisions relating to approval of training programs, written certifications, revocation, and reports.

1992—Subsec. (a)(2). Pub. L. 102–318 added subpar. (D) and substituted ''subparagraph (A) or (C), or both (and not more than 26 weeks, in the case of weeks described in subparagraph (B) or (D))'' for ''paragraph (A) or (C), or both'' in closing provisions.

1988—Subsec. (a)(5). Pub. L. 100–418, § 1423(a)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''Such worker, unless the Secretary has determined that no acceptable job search program is reasonably available—

''(A) is enrolled in a job search program approved by the Secretary under section 2297(c) of this title, or

''(B) has, after the date on which the worker became totally separated, or partially separated, from

the adversely affected employment, completed a job search program approved by the Secretary under section 2297(c) of this title.''

Subsec. (b). Pub. L. 100–418, §1423(a)(2), amended subsec. (b) generally, substituting provisions relating to withholding of trade readjustment allowance pending beginning or resumption of participation in training program, and period of applicability, for provisions relating to mandatory training or job-search.

Subsec. (c). Pub. L. 100–418, §1423(a)(3), amended subsec. (c) generally, substituting provisions relating to approval of training programs, written certifications, revocation of certification, and annual report, for provisions relating to withholding of trade readjustment allowance pending beginning or resumption of participation in job search program.

1986—Subsec. (a)(2). Pub. L. 99–272, §13003(b), substituted provisions restricting to no more than 7 the number of weeks to be treated as weeks of employment under this sentence for provisions designated as clauses (i) to (iii), limiting the weeks that may be treated as weeks of employment to 3, 7, and 7, respectively, under certain conditions.

Subsec. (a)(5). Pub. L. 99–272, §13003(a)(1), added par. (5).

Subsec. (c). Pub. L. 99–272, §13003(a)(2), added subsec. (c).

1981—Pub. L. 97–35 designated existing provisions as subsec. (a), substituted provisions respecting applicability of date upon which petition was filed for provisions respecting applicability of date specified in certification under section 2273(a) of this title, substantially revised and reorganized conditions by, among other changes, adding pars. (3) and (4), and added subsec. (b).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under this part or part 3 of this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 106(b) of Pub. L. 102–318 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to weeks beginning after August 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective on date that is 90 days after Aug. 23, 1988, see section 1430(f) of Pub. L. 100–418, set out as an Effective Date note under section 2397 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT; APPLICATION OF GRAMM-RUDMAN

Pub. L. 99–272, title XIII, §13009, Apr. 7, 1986, 100 Stat. 305, provided that:

''(a) IN GENERAL.—Except as provided in subsections (b) and (c), the amendments made by this part [part 1 (§§13001–13009) of subtitle A, amending this section, sections 2271, 2272, 2292, 2293, 2296, 2297, 2311, 2317, 2319, 2341 to 2344, and 2346 of this title, and provisions set out as a note preceding section 2271 of this title] shall take effect on the date of the enactment of this Act [Apr. 7, 1986].

''(b) JOB SEARCH PROGRAM REQUIREMENTS.—The amendments made by section 13003(a) [amending this section and section 2311 of this title] apply with respect to workers covered by petitions filed under section 221 of the Trade Act of 1974 [section 2271 of this title] on or after the date of the enactment of this Act [Apr. 7, 1986].

''(c) EXTENSION AND AUTHORIZATION.—Chapters 2 and 3 of title II of the Trade Act of 1974 (19 U.S.C. 2271, et seq.) [parts 2 and 3 of this subchapter] shall be applied as if the amendments made by sections 13007 and 13008 [amending sections 2317 and 2346 of this title and provisions set out as a note preceding section 2271 of this title] had taken effect on December 18, 1985.

''(d) APPLICATION OF GRAMM-RUDMAN.—Trade readjustment allowances payable under part I [of subchapter B] of chapter 2 of title II of the Trade Act of 1974 [19 U.S.C. 2291 et seq.] for the period from March 1, 1986, and until October 1, 1986, shall be reduced by a percentage equal to the non-defense sequester percentage applied in the Sequestration Report (submitted under the Balanced Budget and Emergency Deficit Control Act of 1985 [see Short Title note set out under section 900 of Title 2, The Congress] and dated January 21, 1986) of the Comptroller General of the United States for fiscal year 1986.''

EFFECTIVE DATE OF 1981 AMENDMENT AND TRANSITION PROVISIONS

Section 2514 of Pub. L. 97–35, as amended by Pub. L. 97–362, title II, §204, Oct. 24, 1982, 96 Stat. 1733, provided that:

''(a)(1) Except as provided in paragraph (2), this subtitle [enacting section 2275 of this title, amending this section and sections 2272, 2274, 2292, 2293, 2296, 2297, 2298, 2311, 2313, 2315, 2317, and 2319 of this title, repealing section 2318 of this title, enacting provisions set out as a note under section 2292 of this title, and amending provisions set out as a note preceding section 2271 of this title and under section 3304 of Title 26, Internal Revenue Code] shall take effect on the date of the enactment of this Act [Aug. 13, 1981].

''(2)(A) The amendments made by section 2501 [amending section 2272 of this title] shall apply with respect to all petitions for certification filed under section 221 of the Trade Act of 1974 [section 2271 of this title] on or after October 1, 1983.

''(B) The amendments made by sections 2503, 2504, 2505, and 2511 [amending this section, sections 2292, 2293, and 2319 of this title, and provisions set out as a note under section 3304 of Title 26, Internal Revenue Code] shall apply with respect to trade readjustment allowances payable for weeks of unemployment which begin after September 30, 1981.

''(C) The amendments made by sections 2506, 2507, and 2508 [amending sections 2296, 2297, and 2298 of this title] shall take effect with respect to determinations regarding training and applications for allowances under sections 236, 237, and 238 of the Trade Act of 1974 [sections 2296, 2297, and 2298 of this title] that are made or filed after September 30, 1981.

''(D)(i) Except as otherwise provided in clause (ii), the provisions of sections 233(d) and 236(a)(2) of the Trade Act of 1974 (as amended by this Act) [sections 2293(d) and 2296(a)(2) of this title], and the provisions of section 204(a)(2)(C) of the Federal-State Extended Unemployment Compensation Act of 1970 (as added by this Act) [set out as a note under section 3304 of Title 26] shall apply to State unemployment compensation laws for purposes of certifications under section 3304(c) of the Internal Revenue Code of 1954 [section 3304(c) of Title 26] on October 31, of any taxable year after 1981.

''(ii) In the case of any State the legislature of which—

''(I) does not meet in a session which begins after the date of the enactment of this Act [Aug. 13, 1981] and prior to September 1, 1982, and

''(II) if in session on the date of the enactment of this Act, does not remain in session for a period of at least 25 calendar days,

the date '1981' in clause (i) shall be deemed to be '1982'.

''(b) An adversely affected worker who is receiving or is entitled to receive payments of trade readjustment allowances under chapter 2 of the Trade Act of 1974 [this part] for weeks of unemployment beginning before October 1, 1981, shall be entitled to receive—

''(1) with respect to weeks of unemployment beginning before October 1, 1981, payments of trade readjustment allowances determined under such chapter 2 without regard to the amendments made by this subtitle; and

''(2) with respect to weeks of unemployment beginning after September 30, 1981, payments of trade readjustment allowances as determined under such chapter 2 as amended by this subtitle, except that the maximum amount of trade readjustment allowances payable to such an individual for such weeks of unemployment shall be an amount equal to the product of the trade readjustment allowance payable to the individual for a week of total unemployment (as determined under section 232(a) as so amended [section 2292(a) of this title]) multiplied by a factor determined by subtracting from fifty-two the sum of—

''(A) the number of weeks preceding the first week which begins after September 30, 1981, and which are within the period covered by the same certification under such chapter 2 as such week of unemployment, for which the individual was entitled to a trade readjustment allowance or unemployment insurance, or would have been entitled to such allowance or unemployment insurance if he had applied therefor, and

''(B) the number of weeks preceding such first week that are deductible under section 232(d) (as in effect before the amendments made by section 2504) [section 2392(d) of this title];

except that the amount of trade readjustment allowances payable to an adversely affected worker under this paragraph shall be subject to adjustment on a week-to-week basis as may be required by section 232(b) [section 2392(b) of this title].''

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2292. Weekly amounts of readjustment allowance

(a) Formula

Subject to subsections (b) and (c) of this section, the trade readjustment allowance payable to an adversely affected worker for a week of total unemployment shall be an amount equal to the most recent weekly benefit amount of the unemployment insurance payable to the worker for a week of total unemployment preceding the worker's first exhaustion of unemployment insurance (as determined for purposes of section 2291(a)(3)(B) of this title) reduced (but not below zero) by—

(1) any training allowance deductible under subsection (c) of this section; and

(2) income that is deductible from unemployment insurance under the disqualifying income provisions of the applicable State law or Federal unemployment insurance law.

(b) Adversely affected workers who are undergoing training

Any adversely affected worker who is entitled to trade readjustment allowances and who is undergoing training approved by the Secretary shall receive for each week in which he is undergoing any such training, a trade readjustment allowance in an amount (computed for such week) equal to the amount computed under subsection (a) of this section or (if greater) the amount of any weekly allowance for such training to which he would be entitled under any other Federal law for the training of workers, if he applied for such allowance. Such trade readjustment allowance shall be paid in lieu of any training allowance to which the worker would be entitled under such other Federal law.

(c) Deduction from total number of weeks of allowance entitlement

If a training allowance under any Federal law other than this chapter is paid to an adversely affected worker for any week of unemployment with respect to which he would be entitled (determined without regard to any disqualification under section 2291(b) of this title) to a trade readjustment allowance if he applied for such allowance, each such week shall be deducted from the total number of weeks of trade readjustment allowance otherwise payable to him under section 2293(a) of this title when he applies for a trade readjustment allowance and is determined to be entitled to such allowance. If such training allowance paid to such worker for any week of unemployment is less than the amount of the trade readjustment allowance to which he would be entitled if he applied for such allowance, he shall receive, when he applies for a trade readjustment allowance and is determined to be entitled to such allowance, a trade readjustment allowance for such week equal to such difference.

(Pub. L. 93–618, title II, § 232, Jan. 3, 1975, 88 Stat. 2021; Pub. L. 97–35, title XXV, § 2504(a), Aug. 13, 1981, 95 Stat. 883; Pub. L. 99–272, title XIII, § 13003(c), Apr. 7, 1986, 100 Stat. 301; Pub. L. 100–418, title I, § 1423(b), Aug. 23, 1988, 102 Stat. 1246.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original ''this Act'', meaning Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–418, § 1423(b)(1), struck out '', including on-the-job training,'' after ''approved by the Secretary''.

Subsec. (c). Pub. L. 100–418, § 1423(b)(2), substituted ''under section 2291(b)'' for ''under section 2291(c) or 2296(c)''.

1986—Subsec. (c). Pub. L. 99–272 substituted ''under any Federal law other than this chapter'' for ''under any Federal law,'', ''section 2291(c) or 2296(c) of this title'' for ''section 2296(c) of this title'', and ''If such training allowance'' for ''If the training allowance''.

1981—Subsec. (a). Pub. L. 97–35, § 2504(a)(1), substituted provisions setting forth amount of allowance as reduced (but not below zero) by training allowance and income deductions for provisions setting forth amount of allowance as computed by specified percentages of wages and reduced by paid remuneration.

Subsecs. (c), (d). Pub. L. 97–35, § 2504(a)(2)–(4), redesignated subsec. (d) as (c) and struck out references to unemployment insurance and to the inapplicability of former subsecs. (c) and (e) of this section. Former subsec. (c), which related to the computation of unemployment insurance, was struck out.

Subsec. (e). Pub. L. 97–35, § 2504(a)(2), struck out subsec. (e) which related to maximum total for all remuneration and allowances.

Subsec. (f). Pub. L. 97–35, § 2504(a)(2), struck out subsec. (f) which authorized rounding off to whole dollar amounts.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1423(b)(1) effective Aug. 23, 1988, and amendment by section 1423(b)(2) of Pub. L. 100–418 effective on the date that is 90 days after Aug.

23, 1988, see section 1430(a), (f) of Pub. L. 100–418, set out as an Effective Date note under section 2397 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT AND TRANSITION PROVISIONS

Amendment by Pub. L. 97–35 applicable to allowances payable for weeks of unemployment which begin after Sept. 30, 1981, with transition provisions applicable, see section 2514 of Pub. L. 97–35, set out as a note under section 2291 of this title.

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

REFERENCE TO SUBSECTION (d) DEEMED REFERENCE TO (c)

Section 2504(b) of Pub. L. 97–35 provided that: ''Any reference in any law to subsection (d) of section 232 of the Trade Act of 1974 [subsec. (d) of this section] shall be considered a reference to subsection (c) thereof [subsec. (c) of this section].''

§ 2293. Limitations on trade readjustment allowances

(a) Maximum allowance; deduction for unemployment insurance; additional payments for approved training periods

(1) The maximum amount of trade readjustment allowances payable with respect to the period covered by any certification to an adversely affected worker shall be the amount which is the product of 52 multiplied by the trade readjustment allowance payable to the worker for a week of total unemployment (as determined under section 2292(a) of this title), but such product shall be reduced by the total sum of the unemployment insurance to which the worker was entitled (or would have been entitled if he had applied therefor) in the worker's first benefit period described in section 2291(a)(3)(A) of this title.

(2) A trade readjustment allowance shall not be paid for any week occurring after the close of the 104-week period (or, in the case of an adversely affected worker who requires a program of remedial education (as described in section 2296(a)(5)(D) of this title) in order to complete training approved for the worker under section 2296 of this title, the 130-week period) that begins with the first week following the week in which the adversely affected worker was most recently totally separated from adversely affected employment—

(A) within the period which is described in section 2291(a)(1) of this title, and

(B) with respect to which the worker meets the requirements of section 2291(a)(2) of this title.

(3) Notwithstanding paragraph (1), in order to assist the adversely affected worker to complete training approved for him under section 2296 of this title, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 52 additional weeks in the 52-week period that—

(A) follows the last week of entitlement to trade readjustment allowances otherwise payable under this part; or

(B) begins with the first week of such training, if such training begins after the last week described in subparagraph (A).

Payments for such additional weeks may be made only for weeks in such 52-week period during which the individual is participating in such training.

(b) Limitations on additional payments for training periods

A trade readjustment allowance may not be paid for an additional week specified in subsection (a)(3) of this section if the adversely affected worker who would receive such allowance did not make a bona fide application to a training program approved by the Secretary under section 2296 of this title within 210 days after the date of the worker's first certification of eligibility to apply for adjustment assistance issued by the Secretary, or, if later, within 210 days after the date of the worker's total or partial separation referred to in section 2291(a)(1) of this title.

(c) Adjustments of amounts payable

Amounts payable to an adversely affected worker under this division shall be subject to such adjustment on a week-to-week basis as may be required by section 2292(b) of this title.

(d) Special adjustments for benefit years ending with extended benefit periods

Notwithstanding any other provision of this chapter or other Federal law, if the benefit year of a worker ends within an extended benefit period, the number of weeks of extended benefits that such worker would, but for this subsection, be entitled to in that extended benefit period shall be reduced (but not below zero) by the number of weeks for which the worker was entitled, during such benefit year, to trade readjustment allowances under this division. For purposes of this paragraph, the terms ''benefit year'' and ''extended benefit period'' shall have the same respective meanings given to them in the Federal-State Extended Unemployment Compensation Act of 1970.

(e) Week during which worker received on-the-job training

No trade readjustment allowance shall be paid to a worker under this division for any week during which the worker is receiving on-the-job training.

(f) Workers treated as participating in training

For purposes of this part, a worker shall be treated as participating in training during any week which is part of a break in training that does not exceed 30 days if—

(1) the worker was participating in a training program approved under section 2296(a) of this title before the beginning of such break in training, and

(2) the break is provided under such training program.

(g) Additional weeks to complete training

Notwithstanding any other provision of this section, in order to assist an adversely affected worker to complete training approved for the worker under section 2296 of this title which includes a program of remedial education (as de-

scribed in section 2296(a)(5)(D) of this title), and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period that follows the last week of entitlement to trade readjustment allowances otherwise payable under this part.

(Pub. L. 93–618, title II, § 233, Jan. 3, 1975, 88 Stat. 2022; Pub. L. 97–35, title XXV, § 2505(a), Aug. 13, 1981, 95 Stat. 883; Pub. L. 98–369, div. B, title VI, § 2671, July 18, 1984, 98 Stat. 1172; Pub. L. 99–272, title XIII, § 13003(d), Apr. 7, 1986, 100 Stat. 301; Pub. L. 100–418, title I, §§ 1423(c), 1425(a), Aug. 23, 1988, 102 Stat. 1246, 1250; Pub. L. 106–36, title I, § 1001(a)(1), June 25, 1999, 113 Stat. 130; Pub. L. 107–210, div. A, title I, § 116, Aug. 6, 2002, 116 Stat. 941.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d), was in the original ''this Act'', meaning Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

The Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsec. (d), is title II of Pub. L. 91–373, Aug. 10, 1970, 84 Stat. 708, as amended, which is classified generally as a note under section 3304 of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2002—Subsec. (a)(2). Pub. L. 107–210, § 116(a)(1), in introductory provisions inserted ''(or, in the case of an adversely affected worker who requires a program of remedial education (as described in section 2296(a)(5)(D) of this title) in order to complete training approved for the worker under section 2296 of this title, the 130-week period)'' after ''104-week period''.

Subsec. (a)(3). Pub. L. 107–210, § 116(a)(2), substituted ''52'' for ''26'' wherever appearing.

Subsec. (f). Pub. L. 107–210, § 116(b), substituted ''30 days'' for ''14 days'' in introductory provisions.

Subsec. (g). Pub. L. 107–210, § 116(c), added subsec. (g).

1999—Subsec. (a)(2). Pub. L. 106–36 realigned margins of introductory provisions and subpars. (A) and (B).

1988—Subsec. (a)(2). Pub. L. 100–418, § 1425(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''A trade readjustment allowance shall not be paid for any week after the 104-week period beginning with the first week following the first week in the period covered by the certification with respect to which the worker has exhausted (as determined for purposes of section 2291(a)(3)(B) of this title) all rights to that part of his unemployment insurance that is regular compensation.''

Subsec. (a)(3). Pub. L. 100–418, § 1423(c)(2), substituted ''participating in such training'' for ''engaged in such training and has not been determined under section 2296(c) of this title to be failing to make satisfactory progress in the training'' in last sentence.

Subsec. (a)(3)(B). Pub. L. 100–418, § 1423(c)(1), substituted ''begins'' for ''is approved'' after ''training''.

Subsec. (f). Pub. L. 100–418, § 1423(c)(3), added subsec. (f).

1986—Subsec. (a)(2). Pub. L. 99–272, § 13003(d)(1), substituted ''104-week period'' for ''52-week period''.

Subsec. (e). Pub. L. 99–272, § 13003(d)(2), added subsec. (e).

1984—Subsec. (a)(3). Pub. L. 98–369 substituted ''Notwithstanding paragraph (1), in order to assist the adversely affected worker to complete training approved for him under section 2296 of this title, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period that—

''(A) follows the last week of entitlement to trade readjustment allowances otherwise payable under this part; or

''(B) begins with the first week of such training, if such training is approved after the last week described in subparagraph (A).''

for ''Notwithstanding paragraph (1), in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period following the last week of entitlement to trade readjustment allowances otherwise payable under this part in order to assist the adversely affected worker to complete training approved for the worker under section 2296 of this title.''

1981—Subsec. (a). Pub. L. 97–35 substituted provisions relating to maximum amount of allowance payable for provisions relating to time limitations on allowance payable.

Subsec. (b). Pub. L. 97–35 substituted provisions relating to payment for an additional week for provisions relating to payment for an additional week after the appropriate week and provisions determining the appropriate week.

Subsecs. (c), (d). Pub. L. 97–35 added subsecs. (c) and (d).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under this part or part 3 of this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1423(c)(2) of Pub. L. 100–418 effective on date that is 90 days after Aug. 23, 1988, and amendment by section 1425(a) of Pub. L. 100–418 effective Aug. 23, 1988, but not applicable with respect to any total separation of a worker from adversely affected employment (within the meaning of section 2319 of this title) that occurs before Aug. 23, 1988, if the application of such amendment with respect to such total separation would reduce the period for which such worker would (but for such amendment) be allowed to receive trade readjustment allowances under this division, see section 1430(a), (f), (g) of Pub. L. 100–418, set out as an Effective Date note under section 2397 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT AND TRANSITION PROVISIONS

Amendment by Pub. L. 97–35 applicable to allowances payable for weeks of unemployment which begin after Sept. 30, 1981, with transition provisions applicable, and with the amendment of subsec. (d) of this section applicable, except as otherwise provided, to laws for certification purposes under section 3304(c) of title 26 on Oct. 31, of any taxable year after 1981, see section 2514 of Pub. L. 97–35, set out as a note under section 2291 of this title.

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

WAIVER OF CERTAIN TIME LIMITATIONS

Pub. L. 100–418, title I, § 1425(b), Aug. 23, 1988, 102 Stat. 1250, provided that:

''(1) The provisions of subsections (a)(2) and (b) of section 233 of the Trade Act of 1974 [19 U.S.C. 2293(a)(2), (b)] shall not apply with respect to any worker who became totally separated from adversely affected employment (within the meaning of section 247 of such Act [19 U.S.C. 2319]) during the period that began on August 13, 1981, and ended on April 7, 1986.

''(2)(A) Any worker who is otherwise eligible for payment of a trade readjustment allowance under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 [19 U.S.C. 2291 et seq.] by reason of paragraph (1) of this subsection may receive payments of such allowance only if such worker—

''(i) is enrolled in a training program approved by the Secretary under section 236(a) of such Act [19 U.S.C. 2296(a)], and

''(ii) has been unemployed continuously since the date on which the worker became totally separated from the adversely affected employment, not taking into account seasonal employment, odd jobs, or part-time, temporary employment.

''(B) If the Secretary of Labor determines that—

''(i) a worker—

''(I) has failed to begin participation in the training program the enrollment in which meets the requirement of subparagraph (A), or

''(II) has ceased to participate in such training program before completing such training program, and

''(ii) there is no justifiable cause for such failure or cessation,

no trade readjustment allowance may be paid to the worker under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 for the week in which such failure or cessation occurred, or any succeeding week, until the worker begins or resumes participation in a training program approved under section 236(a) of such Act.''

§ 2294. Application of State laws

Except where inconsistent with the provisions of this part and subject to such regulations as the Secretary may prescribe, the availability and disqualification provisions of the State law—

(1) under which an adversely affected worker is entitled to unemployment insurance (whether or not he has filed a claim for such insurance), or

(2) if he is not so entitled to unemployment insurance, of the State in which he was totally or partially separated,

shall apply to any such worker who files a claim for trade readjustment allowances. The State law so determined with respect to a separation of a worker shall remain applicable, for purposes of the preceding sentence, with respect to such separation until such worker becomes entitled to unemployment insurance under another State law (whether or not he has filed a claim for such insurance).

(Pub. L. 93–618, title II, § 234, Jan. 3, 1975, 88 Stat. 2022.)

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

Division II—Training, Other Employment Services, and Allowances

§ 2295. Employment services

The Secretary shall make every reasonable effort to secure for adversely affected workers covered by a certification under subpart A of this part counseling, testing, and placement services, and supportive and other services, provided for under any other Federal law, including the services provided through one-stop delivery systems described in section 2864(c) of title 29. The Secretary shall, whenever appropriate, procure such services through agreements with the States.

(Pub. L. 93–618, title II, § 235, Jan. 3, 1975, 88 Stat. 2023; Pub. L. 100–418, title I, § 1424(d)(1)(A), Aug. 23, 1988, 102 Stat. 1249; Pub. L. 107–210, div. A, title I, § 119, Aug. 6, 2002, 116 Stat. 942.)

AMENDMENTS

2002—Pub. L. 107–210 inserted '', including the services provided through one-stop delivery systems described in section 2864(c) of title 29'' before period at end of first sentence.

1988—Pub. L. 100–418 substituted ''the States'' for ''cooperating State agencies''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under this part or part 3 of this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2296. Training

(a) Approval of training; limitation on expenditures; reasonable expectation of employment; payment of costs; approved training programs; nonduplication of payments from other sources; disapproval of certain programs; exhaustion of unemployment benefits; promulgation of regulations

(1) If the Secretary determines that—

(A) there is no suitable employment (which may include technical and professional employment) available for an adversely affected worker,

(B) the worker would benefit from appropriate training,

(C) there is a reasonable expectation of employment following completion of such training,

(D) training approved by the Secretary is reasonably available to the worker from either governmental agencies or private sources (which may include area career and technical education schools, as defined in section 2302 of title 20, and employers)[1]

(E) the worker is qualified to undertake and complete such training, and

(F) such training is suitable for the worker and available at a reasonable cost,

the Secretary shall approve such training for the worker. Upon such approval, the worker shall be entitled to have payment of the costs of such training (subject to the limitations imposed by this section) paid on his behalf by the Secretary directly or through a voucher system. Insofar as possible, the Secretary shall provide or assure the provision of such training on the

[1] So in original. Probably should be followed by a comma.

job, which shall include related education necessary for the acquisition of skills needed for a position within a particular occupation.

(2)(A) The total amount of payments that may be made under paragraph (1) for any fiscal year shall not exceed $220,000,000.

(B) If, during any fiscal year, the Secretary estimates that the amount of funds necessary to pay the costs of training approved under this section will exceed the amount of the limitation imposed under subparagraph (A), the Secretary shall decide how the portion of such limitation that has not been expended at the time of such estimate is to be apportioned among the States for the remainder of such fiscal year.

(3) For purposes of applying paragraph (1)(C), a reasonable expectation of employment does not require that employment opportunities for a worker be available, or offered, immediately upon the completion of training approved under this paragraph (1).

(4)(A) If the costs of training an adversely affected worker are paid by the Secretary under paragraph (1), no other payment for such costs may be made under any other provision of Federal law.

(B) No payment may be made under paragraph (1) of the costs of training an adversely affected worker if such costs—

(i) have already been paid under any other provision of Federal law, or

(ii) are reimbursable under any other provision of Federal law and a portion of such costs have already been paid under such other provision of Federal law.

(C) The provisions of this paragraph shall not apply to, or take into account, any funds provided under any other provision of Federal law which are used for any purpose other than the direct payment of the costs incurred in training a particular adversely affected worker, even if such use has the effect of indirectly paying or reducing any portion of the costs involved in training the adversely affected worker.

(5) The training programs that may be approved under paragraph (1) include, but are not limited to—

(A) employer-based training, including—

(i) on-the-job training, and

(ii) customized training,

(B) any training program provided by a State pursuant to title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.],

(C) any training program approved by a private industry council established under section 102 of such Act,

(D) any program of remedial education,

(E) any training program (other than a training program described in paragraph (7)) for which all, or any portion, of the costs of training the worker are paid—

(i) under any Federal or State program other than this chapter, or

(ii) from any source other than this section, and

(F) any other training program approved by the Secretary.

(6)(A) The Secretary is not required under paragraph (1) to pay the costs of any training approved under paragraph (1) to the extent that such costs are paid—

(i) under any Federal or State program other than this part, or

(ii) from any source other than this section.

(B) Before approving any training to which subparagraph (A) may apply, the Secretary may require that the adversely affected worker enter into an agreement with the Secretary under which the Secretary will not be required to pay under this section the portion of the costs of such training that the worker has reason to believe will be paid under the program, or by the source, described in clause (i) or (ii) of subparagraph (A).

(7) The Secretary shall not approve a training program if—

(A) all or a portion of the costs of such training program are paid under any nongovernmental plan or program,

(B) the adversely affected worker has a right to obtain training or funds for training under such plan or program, and

(C) such plan or program requires the worker to reimburse the plan or program from funds provided under this part, or from wages paid under such training program, for any portion of the costs of such training program paid under the plan or program.

(8) The Secretary may approve training for any adversely affected worker who is a member of a group certified under subpart A of this part at any time after the date on which the group is certified under subpart A of this part, without regard to whether such worker has exhausted all rights to any unemployment insurance to which the worker is entitled.

(9) The Secretary shall prescribe regulations which set forth the criteria under each of the subparagraphs of paragraph (1) that will be used as the basis for making determinations under paragraph (1).

(b) Supplemental assistance

The Secretary may, where appropriate, authorize supplemental assistance necessary to defray reasonable transportation and subsistence expenses for separate maintenance when training is provided in facilities which are not within commuting distance of a worker's regular place of residence. The Secretary may not authorize—

(1) payments for subsistence that exceed whichever is the lesser of (A) the actual per diem expenses for subsistence, or (B) payments at 50 percent of the prevailing per diem allowance rate authorized under the Federal travel regulations, or

(2) payments for travel expenses exceeding the prevailing mileage rate authorized under the Federal travel regulations.

(c) Payment of costs of on-the-job training

The Secretary shall pay the costs of any on-the-job training of an adversely affected worker that is approved under subsection (a)(1) of this section in equal monthly installments, but the Secretary may pay such costs, notwithstanding any other provision of this section, only if—

(1) no currently employed worker is displaced by such adversely affected worker (including partial displacement such as a reduc-

tion in the hours of nonovertime work, wages, or employment benefits),

(2) such training does not impair existing contracts for services or collective bargaining agreements,

(3) in the case of training which would be inconsistent with the terms of a collective bargaining agreement, the written concurrence of the labor organization concerned has been obtained,

(4) no other individual is on layoff from the same, or any substantially equivalent, job for which such adversely affected worker is being trained,

(5) the employer has not terminated the employment of any regular employee or otherwise reduced the workforce of the employer with the intention of filling the vacancy so created by hiring such adversely affected worker,

(6) the job for which such adversely affected worker is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals,

(7) such training is not for the same occupation from which the worker was separated and with respect to which such worker's group was certified pursuant to section 2272 of this title,

(8) the employer is provided reimbursement of not more than 50 percent of the wage rate of the participant, for the cost of providing the training and additional supervision related to the training,

(9) the employer has not received payment under subsection (a)(1) of this section with respect to any other on-the-job training provided by such employer which failed to meet the requirements of paragraphs (1), (2), (3), (4), (5), and (6), and

(10) the employer has not taken, at any time, any action which violated the terms of any certification described in paragraph (8) made by such employer with respect to any other on-the-job training provided by such employer for which the Secretary has made a payment under subsection (a)(1) of this section.

(d) Eligibility for unemployment insurance

A worker may not be determined to be ineligible or disqualified for unemployment insurance or program benefits under this subpart because the individual is in training approved under subsection (a) of this section, because of leaving work which is not suitable employment to enter such training, or because of the application to any such week in training of provisions of State law or Federal unemployment insurance law relating to availability for work, active search for work, or refusal to accept work. The Secretary shall submit to the Congress a quarterly report regarding the amount of funds expended during the quarter concerned to provide training under subsection (a) of this section and the anticipated demand for such funds for any remaining quarters in the fiscal year concerned.

(e) "Suitable employment" defined

For purposes of this section the term ''suitable employment'' means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage.

(f) "Customized training" defined

For purposes of this section, the term ''customized training'' means training that is—

(1) designed to meet the special requirements of an employer or group of employers;

(2) conducted with a commitment by the employer or group of employers to employ an individual upon successful completion of the training; and

(3) for which the employer pays for a significant portion (but in no case less than 50 percent) of the cost of such training, as determined by the Secretary.

(Pub. L. 93–618, title II, §236, Jan. 3, 1975, 88 Stat. 2023; Pub. L. 97–35, title XXV, §2506(2), Aug. 13, 1981, 95 Stat. 885; Pub. L. 99–272, title XIII, §13004(a), Apr. 7, 1986, 100 Stat. 301; Pub. L. 100–418, title I, §1424(a)–(c), Aug. 23, 1988, 102 Stat. 1248, 1249; Pub. L. 100–647, title IX, §9001(a)(20), Nov. 10, 1988, 102 Stat. 3808; Pub. L. 103–66, title XIII, §13803(b), Aug. 10, 1993, 107 Stat. 668; Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(14)(A), (f)(11)(A)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–421, 2681–431; Pub. L. 107–210, div. A, title I, §§117, 118, Aug. 6, 2002, 116 Stat. 941; Pub. L. 109–270, §2(b)(2), Aug. 12, 2006, 120 Stat. 746.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsec. (a)(5)(B), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

Section 102 of such Act, referred to in subsec. (a)(5)(C), meaning section 102 of the Job Training Partnership Act, was classified to section 1512 of Title 29, Labor, and was repealed by Pub. L. 105–220, title I, §199(b)(2), (c)(2)(B), Aug. 7, 1998, 112 Stat. 1059, effective July 1, 2000. Pursuant to section 2940(b) of Title 29, references to a provision of the Job Training Partnership Act, effective Aug. 7, 1998, are deemed to refer to that provision or the corresponding provision of the Workforce Investment Act of 1998, Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, and effective July 1, 2000, are deemed to refer to the corresponding provision of the Workforce Investment Act of 1998. For complete classification of the Workforce Investment Act of 1998 to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

2006—Subsec. (a)(1)(D). Pub. L. 109–270 substituted ''area career and technical education schools, as defined in section 2302 of title 20'' for ''area vocational education schools, as defined in section 195(2) of the Vocational Education Act of 1963''.

2002—Subsec. (a)(2)(A). Pub. L. 107–210, §117, substituted ''$220,000,000'' for ''$80,000,000, except that for fiscal year 1997, the total amount of payments made under paragraph (1) shall not exceed $70,000,000''.

Subsec. (a)(5)(A). Pub. L. 107–210, §118(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''on-the-job training,''.

Subsec. (c)(8). Pub. L. 107–210, §118(b), amended par. (8) generally. Prior to amendment, par. (8) read as follows: ''the employer certifies to the Secretary that the

employer will continue to employ such worker for at least 26 weeks after completion of such training if the worker desires to continue such employment and the employer does not have due cause to terminate such employment,''.

Subsec. (f). Pub. L. 107–210, § 118(c), added subsec. (f).

1998—Subsec. (a)(5)(B). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(11)(A)], struck out ''section 1653 of title 29 or'' before ''title I of''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(14)(A)], substituted ''section 1653 of title 29 or title I of the Workforce Investment Act of 1998'' for ''section 1653 of title 29''.

1993—Subsec. (a)(2)(A). Pub. L. 103–66 inserted before period at end '', except that for fiscal year 1997, the total amount of payments made under paragraph (1) shall not exceed $70,000,000''.

1988—Subsec. (a)(1). Pub. L. 100–418, § 1424(a)(5)–(7), struck out ''(to the extent appropriated funds are available)'' after ''the Secretary shall'' in first sentence, and in second sentence inserted ''(subject to the limitations imposed by this section)'' after ''costs of such training'' and ''directly or through a voucher system'' after ''by the Secretary''.

Subsec. (a)(1)(D). Pub. L. 100–418, § 1424(a)(1), substituted ''is reasonably available'' for ''is available''.

Subsec. (a)(1)(F). Pub. L. 100–418, § 1424(a)(2)–(4), added subpar. (F).

Subsec. (a)(2). Pub. L. 100–418, § 1424(a)(11), (12), added par. (2) and redesignated former par. (2) as (3).

Subsec. (a)(2)(A). Pub. L. 100–418, § 1424(b), directed the amendment of subpar. (A) by substituting ''$120,000,000'' for ''$80,000,000'', which amendment did not become effective pursuant to section 1430(d) of Pub. L. 100–418, as amended, set out as an Effective Date note under section 2397 of this title.

Subsec. (a)(3), (4). Pub. L. 100–418, § 1424(a)(11), redesignated pars. (2) and (3) as (3) and (4), respectively. Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 100–418, § 1424(a)(8)–(11), redesignated former par. (4) as (5), added subpars. (D) and (E), and redesignated former subpar. (D) as (F).

Subsec. (a)(6). Pub. L. 100–418, § 1424(a)(13), added par. (6).

Subsec. (a)(6)(B). Pub. L. 100–647 substituted ''in clause (i) or (ii) of subparagraph (A)'' for ''in subparagraph (A) or (B) of paragraph (1)''.

Subsec. (a)(7) to (9). Pub. L. 100–418, § 1424(a)(13), added pars. (7) to (9).

Subsec. (c). Pub. L. 100–418, § 1424(c)(1), substituted present introductory provisions for ''Notwithstanding any provision of subsection (a)(1) of this section, the Secretary may pay the costs of on-the-job training of an adversely affected worker under subsection (a)(1) of this section only if—''.

Pub. L. 100–418, § 1424(c)(2), (3), redesignated subsec. (d) as (c), and struck out former subsec. (c) which related to refusal to accept or continue training, or failure to make satisfactory progress.

Subsecs. (d) to (f). Pub. L. 100–418, § 1424(c)(3), redesignated subsecs. (e) and (f) as (d) and (e), respectively. Former subsec. (d) redesignated (c).

1986—Subsec. (a)(1). Pub. L. 99–272, § 13004(a)(2), substituted ''shall (to the extent appropriated funds are available) approve'' for ''may approve'' in first sentence.

Subsec. (a)(1)(A). Pub. L. 99–272, § 13004(a)(1), substituted ''for an adversely affected worker'' for ''for a worker''.

Subsec. (a)(2) to (4). Pub. L. 99–272, § 13004(a)(6), added pars. (2) to (4). Former pars. (2) and (3) redesignated subsecs. (e) and (f), respectively.

Subsec. (d). Pub. L. 99–272, § 13004(a)(7), added subsec. (d).

Subsec. (e). Pub. L. 99–272, § 13004(a)(3), (5), redesignated par. (2) of subsec. (a) as subsec. (e) and substituted ''under subsection (a) of this section'' for ''under paragraph (1)'' in two places.

Subsec. (f). Pub. L. 99–272, § 13004(a)(4), (5), redesignated par. (3) of subsec. (a) as subsec. (f) and substituted ''this section'' for ''this subsection''.

1981—Subsec. (a). Pub. L. 97–35 redesignated existing provisions as par. (1), revised provisions, made changes in nomenclature, inserted provisions respecting availability, payment, and scope of training, and added pars. (2) and (3).

Subsec. (b). Pub. L. 97–35 substituted provisions limiting the maximum amount of travel expenses on the basis of amounts paid under Federal travel regulations for provisions establishing specific maximum amounts for subsistence and transportation expenses.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under this part or part 3 of this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, § 405(d)(14)(A)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(11)(A)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)], set out as a note under section 3502 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–647 applicable as if such amendment took effect on Aug. 23, 1988, see section 9001(b) of Pub. L. 100–647, set out as an Effective and Termination Dates of 1988 Amendments note under section 58c of this title.

Amendment by section 1424(c)(2), (3) of Pub. L. 100–418 effective on date that is 90 days after Aug. 23, 1988, see section 1430(f) of Pub. L. 100–418, set out as an Effective Date note under section 2397 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT AND TRANSITION PROVISIONS

Amendment by Pub. L. 97–35 effective for determinations made or filed after Sept. 30, 1981, with transition provisions applicable, and with the amendment of subsec. (a)(2) of this section applicable, except as otherwise provided, to laws for certification purposes under section 3304 of title 26 on Oct. 31, of any taxable year after 1981, see section 2514 of Pub. L. 97–35, set out as a note under section 2291 of this title.

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (d) of this section relating to submitting a quarterly report to Congress on funds for training under subsection (a) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 124 of House Document No. 103–7.

§ 2297. Job search allowances

(a) Job search allowance authorized

(1) In general

An adversely affected worker covered by a certification issued under subpart A of this part may file an application with the Secretary for payment of a job search allowance.

(2) Approval of applications

The Secretary may grant an allowance pursuant to an application filed under paragraph (1) when all of the following apply:

(A) Assist adversely affected worker

The allowance is paid to assist an adversely affected worker who has been totally separated in securing a job within the United States.

(B) Local employment not available

The Secretary determines that the worker cannot reasonably be expected to secure suitable employment in the commuting area in which the worker resides.

(C) Application

The worker has filed an application for the allowance with the Secretary before—

(i) the later of—

(I) the 365th day after the date of the certification under which the worker is certified as eligible; or

(II) the 365th day after the date of the worker's last total separation; or

(ii) the date that is the 182d day after the date on which the worker concluded training, unless the worker received a waiver under section 2291(c) of this title.

(b) Amount of allowance

(1) In general

An allowance granted under subsection (a) of this section shall provide reimbursement to the worker of 90 percent of the cost of necessary job search expenses as prescribed by the Secretary in regulations.

(2) Maximum allowance

Reimbursement under this subsection may not exceed $1,250 for any worker.

(3) Allowance for subsistence and transportation

Reimbursement under this subsection may not be made for subsistence and transportation expenses at levels exceeding those allowable under section 2296(b) (1) and (2) of this title.

(c) Exception

Notwithstanding subsection (b) of this section, the Secretary shall reimburse any adversely affected worker for necessary expenses incurred by the worker in participating in a job search program approved by the Secretary.

(Pub. L. 93–618, title II, § 237, Jan. 3, 1975, 88 Stat. 2023; Pub. L. 97–35, title XXV, § 2507, Aug. 13, 1981, 95 Stat. 886; Pub. L. 98–369, div. B, title VI, § 2672(a), July 18, 1984, 98 Stat. 1172; Pub. L. 99–272, title XIII, § 13005(a), Apr. 7, 1986, 100 Stat. 303; Pub. L. 107–210, div. A, title I, § 121, Aug. 6, 2002, 116 Stat. 942.)

AMENDMENTS

2002—Pub. L. 107–210 amended section generally. Prior to amendment, section related to applications for job search allowances, amounts of allowances, conditions for granting allowances, and reimbursement of worker expenses.

1986—Subsec. (c). Pub. L. 99–272 added subsec. (c).

1984—Subsec. (a)(1). Pub. L. 98–369 substituted ''$800'' for ''$600''.

1981—Subsec. (a). Pub. L. 97–35, § 2507(1), amended provisions generally, increasing percent of reimbursement of cost of job search from 80 to 90 and maximum amount from $500 to $600, and striking out requirement of total separation.

Subsec. (b)(1). Pub. L. 97–35, § 2507(2)(A), inserted ''who has been totally separated'' after ''to assist an adversely affected worker''.

Subsec. (b)(3). Pub. L. 97–35, § 2507(2)(B), amended par. (3) generally, substituting the 182-day period for a reasonable period of time and inserting provision relating to 365 days after certification.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under this part or part 3 of this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT AND TRANSITION PROVISIONS

Amendment by Pub. L. 97–35 effective for determinations made or filed after Sept. 30, 1981, with transition provisions applicable, see section 2514 of Pub. L. 97–35, set out as a note under section 2291 of this title.

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2298. Relocation allowances

(a) Relocation allowance authorized

(1) In general

Any adversely affected worker covered by a certification issued under subpart A of this part may file an application for a relocation allowance with the Secretary, and the Secretary may grant the relocation allowance, subject to the terms and conditions of this section.

(2) Conditions for granting allowance

A relocation allowance may be granted if all of the following terms and conditions are met:

(A) Assist an adversely affected worker

The relocation allowance will assist an adversely affected worker in relocating within the United States.

(B) Local employment not available

The Secretary determines that the worker cannot reasonably be expected to secure suitable employment in the commuting area in which the worker resides.

(C) Total separation

The worker is totally separated from employment at the time relocation commences.

(D) Suitable employment obtained

The worker—

(i) has obtained suitable employment affording a reasonable expectation of long-term duration in the area in which the worker wishes to relocate; or

(ii) has obtained a bona fide offer of such employment.

(E) Application

The worker filed an application with the Secretary before—

(i) the later of—

(I) the 425th day after the date of the certification under subpart A of this part; or

(II) the 425th day after the date of the worker's last total separation; or

(ii) the date that is the 182d day after the date on which the worker concluded training, unless the worker received a waiver under section 2291(c) of this title.

(b) Amount of allowance

The relocation allowance granted to a worker under subsection (a) of this section includes—

(1) 90 percent of the reasonable and necessary expenses (including, but not limited to, subsistence and transportation expenses at levels not exceeding those allowable under section 2296(b)(1) and (2) of this title specified in regulations prescribed by the Secretary) incurred in transporting the worker, the worker's family, and household effects; and

(2) a lump sum equivalent to 3 times the worker's average weekly wage, up to a maximum payment of $1,250.

(c) Limitations

A relocation allowance may not be granted to a worker unless—

(1) the relocation occurs within 182 days after the filing of the application for relocation assistance; or

(2) the relocation occurs within 182 days after the conclusion of training, if the worker entered a training program approved by the Secretary under section 2296(b)(1) and (2) of this title.

(Pub. L. 93–618, title II, § 238, Jan. 3, 1975, 88 Stat. 2024; Pub. L. 97–35, title XXV, § 2508, Aug. 13, 1981, 95 Stat. 886; Pub. L. 98–369, div. B, title VI, § 2672(b), July 18, 1984, 98 Stat. 1172; Pub. L. 107–210, div. A, title I, § 122, Aug. 6, 2002, 116 Stat. 943; Pub. L. 108–429, title II, § 2004(a)(6), Dec. 3, 2004, 118 Stat. 2590.)

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108–429 substituted ''Secretary)'' for ''Secretary,''.

2002—Pub. L. 107–210 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (d) authorizing relocation allowances, specifying the conditions for granting them, and defining ''relocation allowance''.

1984—Subsec. (d)(2). Pub. L. 98–369 substituted ''$800'' for ''$600''.

1981—Subsec. (a). Pub. L. 97–35, § 2508(1), inserted provisions relating to time for filing application and struck out provisions respecting total separation.

Subsec. (b)(3). Pub. L. 97–35, § 2508(2), added par. (3).

Subsec. (c). Pub. L. 97–35, § 2508(3), substituted provisions respecting 182-day requirements for provisions respecting requirements involving entitlements for the week in which the application is filed and relocation occurring within a reasonable period of time.

Subsec. (d)(1). Pub. L. 97–35, § 2508(4)(A), increased percentage from 80 to 90 percent and inserted provision respecting allowable levels of subsistence and travel expenses.

Subsec. (d)(2). Pub. L. 97–35, § 2508(4)(B), increased maximum payment from $500 to $600.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under this part or part 3 of this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT AND TRANSITION PROVISIONS

Amendment by Pub. L. 97–35 effective for determinations made or filed after Sept. 30, 1981, with transition provisions applicable, see section 2514 of Pub. L. 97–35, set out as a note under section 2291 of this title.

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

SUBPART C—GENERAL PROVISIONS

§ 2311. Agreements with States

(a) Authority of Secretary to enter into agreements

The Secretary is authorized on behalf of the United States to enter into an agreement with any State, or with any State agency (referred to in this subpart as ''cooperating States'' and ''cooperating States agencies'' respectively). Under such an agreement, the cooperating State agency (1) as agent of the United States, will receive applications for, and will provide, payments on the basis provided in this part, (2) where appropriate, but in accordance with subsection (f) of this section, will afford adversely affected workers testing, counseling, referral to training and job search programs, and placement services, (3) will make any certifications required under section 2291(c)(2)[1] of this title, and (4) will otherwise cooperate with the Secretary and with other State and Federal agencies in providing payments and services under this part.

(b) Amendment, suspension, and termination of agreements

Each agreement under this subpart shall provide the terms and conditions upon which the agreement may be amended, suspended, or terminated.

(c) Unemployment insurance

Each agreement under this subpart shall provide that unemployment insurance otherwise payable to any adversely affected worker will not be denied or reduced for any week by reason of any right to payments under this part.

(d) Review

A determination by a cooperating State agency with respect to entitlement to program benefits under an agreement is subject to review in the same manner and to the same extent as determinations under the applicable State law and only in that manner and to that extent.

(e) Coordination of benefits and assistance

Any agreement entered into under this section shall provide for the coordination of the administration of the provisions for employment services, training, and supplemental assistance under sections 2295 and 2296 of this title and under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] upon such terms and conditions as are established by the Secretary in consultation with the States and set forth in such agreement. Any agency of the State jointly

[1] See References in Text note below.

administering such provisions under such agreement shall be considered to be a cooperating State agency for purposes of this part.

(f) Advising and interviewing adversely affected workers

Each cooperating State agency shall, in carrying out subsection (a)(2) of this section—

(1) advise each worker who applies for unemployment insurance of the benefits under this part and the procedures and deadlines for applying for such benefits,

(2) facilitate the early filing of petitions under section 2271 of this title for any workers that the agency considers are likely to be eligible for benefits under this part,

(3) advise each adversely affected worker to apply for training under section 2296(a) of this title before, or at the same time, the worker applies for trade readjustment allowances under division I of subpart B of this part, and

(4) as soon as practicable, interview the adversely affected worker regarding suitable training opportunities available to the worker under section 2296 of this title and review such opportunities with the worker.

(g) Submission of information for coordination of workforce investment activities

In order to promote the coordination of workforce investment activities in each State with activities carried out under this part, any agreement entered into under this section shall provide that the State shall submit to the Secretary, in such form as the Secretary may require, the description and information described in paragraphs (8) and (14) of section 112(b) of the Workforce Investment Act of 1998 [29 U.S.C. 2822(b)].

(Pub. L. 93–618, title II, § 239, Jan. 3, 1975, 88 Stat. 2024; Pub. L. 97–35, title XXV, § 2513(d)(6), Aug. 13, 1981, 95 Stat. 889; Pub. L. 99–272, title XIII, §§ 13003(a)(3), 13004(c), Apr. 7, 1986, 100 Stat. 301, 303; Pub. L. 100–418, title I, §§ 1423(a)(4), 1424(d)(1)(B), (2), Aug. 23, 1988, 102 Stat. 1246, 1250; Pub. L. 105–220, title III, § 321, Aug. 7, 1998, 112 Stat. 1087; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(14)(B), (f)(11)(B)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–421, 2681–431.)

REFERENCES IN TEXT

Section 2291(c)(2) of this title, referred to in subsec. (a)(3), was subsequently amended, and no longer contains provisions relating to certifications.

The Workforce Investment Act of 1998, referred to in subsec. (e), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

CODIFICATION

Section is comprised of subsecs. (a) to (g) of Pub. L. 93–618. Another subsec. (e) of section 239 of Pub. L. 93–618 amended section 3302 of Title 26, Internal Revenue Code.

Amendment by section 1424(d)(1)(B) of Pub. L. 100–418, which directed amendment of subsection (e) of section 239 of Pub. L. 93–618, was executed to the subsection (e) set out in this section and not the subsection (e) that amended section 3302 of Title 26, Internal Revenue Code, to reflect the probable intent of Congress.

AMENDMENTS

1998—Subsec. (e). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(11)(B)], struck out ''title III of the Job Training Partnership Act or'' before ''title I of the''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(14)(B)], substituted ''under title III of the Job Training Partnership Act or title I of the Workforce Investment Act of 1998'' for ''under title III of the Job Training Partnership Act''.

Subsec. (g). Pub. L. 105–220 added subsec. (g).

1988—Subsec. (a)(3). Pub. L. 100–418, § 1423(a)(4), amended cl. (3) generally. Prior to amendment, cl. (3) read as follows: ''will make determinations and approvals regarding job search programs under sections 2291(c) and 2297(c) of this title, and''.

Subsec. (e). Pub. L. 100–418, § 1424(d)(1)(B), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''Agreements entered into under this section may be made with one or more State or local agencies including—

''(1) the employment service agency of such State,

''(2) any State agency carrying out title III of the Job Training Partnership Act [29 U.S.C. 1651 et seq.], or

''(3) any other State or local agency administering job training or related programs.''

See Codification note above.

Subsec. (f). Pub. L. 100–418, § 1424(d)(2), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''Each cooperating State agency shall, in carrying out subsection (a)(2) of this section—

''(1) advise each adversely affected worker to apply for training under section 2296(a) of this title at the time the worker makes application for trade readjustment allowances (but failure of the worker to do so may not be treated as cause for denial of those allowances), and

''(2) within 60 days after application for training is made by the worker, interview the adversely affected worker regarding suitable training opportunities available to the worker under section 2296 of this title and review such opportunities with the worker.''

1986—Subsec. (a). Pub. L. 99–272, § 13004(c)(1), inserted ''but in accordance with subsection (f) of this section,'' in cl. (2).

Pub. L. 99–272, § 13003(a)(3), substituted ''training and job search programs'' for ''training'' in cl. (2), added cl. (3), and redesignated former cl. (3) as (4).

Subsecs. (e), (f). Pub. L. 99–272, § 13004(c)(2), added subsecs. (e) and (f).

1981—Subsec. (a). Pub. L. 97–35 struck out provisions respecting persons applying for payments under this part.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, § 405(d)(14)(B)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(11)(B)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)], set out as a note under section 3502 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1424(d)(1)(B), (2) of Pub. L. 100–418 effective Aug. 23, 1988, and amendment by section 1423(a)(4) of Pub. L. 100–418 effective on the date that is 90 days after Aug. 23, 1988, see section 1430(a), (f) of Pub. L. 100–418, set out as an Effective Date note under section 2397 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 13003(a) of Pub. L. 99–272 applicable with respect to workers covered by petitions filed under section 2271 of this title on or after Apr. 7, 1986, and amendment by section 13004(c) of Pub. L. 99–272 effective on Apr. 7, 1986, see section 13009(a), (b) of Pub. L. 99–272, set out as a note under section 2291 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT AND TRANSITION PROVISIONS

Amendment by Pub. L. 97–35 effective Aug. 1981, with transition provisions applicable, see section 2514 of Pub. L. 97–35, set out as a note under section 2291 of this title.

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2312. Administration absent State agreement

(a) Promulgation of regulations; fair hearing

In any State where there is no agreement in force between a State or its agency under section 2311 of this title, the Secretary shall arrange under regulations prescribed by him for performance of all necessary functions under subpart B of this part, including provision for a fair hearing for any worker whose application for payments is denied.

(b) Review of final determination

A final determination under subsection (a) of this section with respect to entitlement to program benefits under subpart B of this part is subject to review by the courts in the same manner and to the same extent as is provided by section 405(g) of title 42.

(Pub. L. 93–618, title II, § 240, Jan. 3, 1975, 88 Stat. 2025.)

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2313. Payments to States

(a) Certification to Secretary of the Treasury for payment to cooperating States

The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each cooperating State the sums necessary to enable such State as agent of the United States to make payments provided for by this part.

(b) Utilization or return of money

All money paid a State under this section shall be used solely for the purposes for which it is paid; and money so paid which is not used for such purposes shall be returned, at the time specified in the agreement under this subpart, to the Secretary of the Treasury.

(c) Surety bonds

Any agreement under this subpart may require any officer or employee of the State certifying payments or disbursing funds under the agreement or otherwise participating in the performance of the agreement, to give a surety bond to the United States in such amount as the Secretary may deem necessary, and may provide for the payment of the cost of such bond from funds for carrying out the purposes of this part.

(Pub. L. 93–618, title II, § 241, Jan. 3, 1975, 88 Stat. 2025; Pub. L. 97–35, title XXV, § 2513(b), Aug. 13, 1981, 95 Stat. 889.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–35 struck out provisions relating to payment to the State by the Secretary of the Treasury from the Adjustment Assistance Trust Fund prior to audit or settlement by the General Accounting Office.

Subsec. (b). Pub. L. 97–35 struck out provisions relating to crediting money returned to the Secretary of the Treasury to the Adjustment Assistance Trust Fund.

EFFECTIVE DATE OF 1981 AMENDMENT AND TRANSITION PROVISIONS

Amendment by Pub. L. 97–35 effective Aug. 1981, with transition provisions applicable, see section 2514 of Pub. L. 97–35, set out as a note under section 2291 of this title.

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2314. Liabilities of certifying and disbursing officers

(a) Certifying officer

No person designated by the Secretary, or designated pursuant to an agreement under this subpart, as a certifying officer, shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment certified by him under this part.

(b) Disbursing officer

No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this part if it was based upon a voucher signed by a certifying officer designated as provided in subsection (a) of this section.

(Pub. L. 93–618, title II, § 242, Jan. 3, 1975, 88 Stat. 2026.)

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2315. Fraud and recovery of overpayments

(a) Repayment; deductions

(1) If a cooperating State agency, the Secretary, or a court of competent jurisdiction determines that any person has received any payment under this part to which the person was not entitled, including a payment referred to in subsection (b) of this section, such person shall be liable to repay such amount to the State agency or the Secretary, as the case may be, except that the State agency or the Secretary may waive such repayment if such agency or the Secretary determines, in accordance with guidelines prescribed by the Secretary, that—

(A) the payment was made without fault on the part of such individual, and

(B) requiring such repayment would be contrary to equity and good conscience.

(2) Unless an overpayment is otherwise recovered, or waived under paragraph (1), the State

agency or the Secretary shall recover the overpayment by deductions from any sums payable to such person under this part, under any Federal unemployment compensation law administered by the State agency or the Secretary, or under any other Federal law administered by the State agency or the Secretary which provides for the payment of assistance or an allowance with respect to unemployment, and, notwithstanding any other provision of State law or Federal law to the contrary, the Secretary may require the State agency to recover any overpayment under this part by deduction from any unemployment insurance payable to such person under the State law, except that no single deduction under this paragraph shall exceed 50 percent of the amount otherwise payable.

(b) False representation or nondisclosure of material fact

If a cooperating State agency, the Secretary, or a court of competent jurisdiction determines that an individual—

(1) knowingly has made, or caused another to make, a false statement or representation of a material fact, or

(2) knowingly has failed, or caused another to fail, to disclose a material fact,

and as a result of such false statement or representation, or of such nondisclosure, such individual has received any payment under this part to which the individual was not entitled, such individual shall, in addition to any other penalty provided by law, be ineligible for any further payments under this part.

(c) Notice of determination; fair hearing; finality

Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination under subsection (a)(1) of this section by the State agency or the Secretary, as the case may be, has been made, notice of the determination and an opportunity for a fair hearing thereon has been given to the individual concerned, and the determination has become final.

(d) Recovered amount returned to Treasury

Any amount recovered under this section shall be returned to the Treasury of the United States.

(Pub. L. 93–618, title II, § 243, Jan. 3, 1975, 88 Stat. 2026; Pub. L. 97–35, title XXV, § 2509, Aug. 13, 1981, 95 Stat. 887.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–35 designated existing provisions as par. (1), revised provisions, made changes in nomenclature and, among other changes, inserted provisions respecting waiver, and added par. (2).

Subsec. (b). Pub. L. 97–35 substituted provisions relating to ineligibility for other payments for provisions relating to deposit, return, and credit of repayments.

Subsecs. (c), (d). Pub. L. 97–35 added subsecs. (c) and (d).

EFFECTIVE DATE OF 1981 AMENDMENT AND TRANSITION PROVISIONS

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, with transition provisions applicable, see section 2514 of Pub. L. 97–35, set out as a note under section 2291 of this title.

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2316. Penalties

Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other person any payment authorized to be furnished under this part or pursuant to an agreement under section 2311 of this title shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(Pub. L. 93–618, title II, § 244, Jan. 3, 1975, 88 Stat. 2026.)

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2317. Authorization of appropriations

(a) In general

There are authorized to be appropriated to the Department of Labor, for the period beginning October 1, 2001, and ending December 31, 2007, such sums as may be necessary to carry out the purposes of this part.

(b) Period of expenditure

Funds obligated for any fiscal year to carry out activities under sections 2295 through 2298 of this title may be expended by each State receiving such funds during that fiscal year and the succeeding two fiscal years.

(Pub. L. 93–618, title II, § 245, Jan. 3, 1975, 88 Stat. 2026; Pub. L. 97–35, title XXV, § 2510, Aug. 13, 1981, 95 Stat. 888; Pub. L. 98–120, § 2(a), Oct. 12, 1983, 97 Stat. 809; Pub. L. 99–272, title XIII, § 13008(a), Apr. 7, 1986, 100 Stat. 305; Pub. L. 100–418, title I, § 1426(b)(1), Aug. 23, 1988, 102 Stat. 1251; Pub. L. 103–66, title XIII, § 13803(a)(2), Aug. 10, 1993, 107 Stat. 668; Pub. L. 103–182, title V, § 504, Dec. 8, 1993, 107 Stat. 2151; Pub. L. 105–277, div. J, title I, § 1012(a), Oct. 21, 1998, 112 Stat. 2681–900; Pub. L. 106–113, div. B, § 1000(a)(5) [title VII, § 702(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–319; Pub. L. 107–210, div. A, title I, §§ 111(a), 120, Aug. 6, 2002, 116 Stat. 936, 942; Pub. L. 109–280, title XIV, § 1635(f)(3), Aug. 17, 2006, 120 Stat. 1171; Pub. L. 110–89, § 1(a), Sept. 28, 2007, 121 Stat. 982.)

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–89 substituted ''December 31, 2007'' for ''September 30, 2007''.

2006—Subsec. (a). Pub. L. 109–280 struck out '', other than subpart D'' before period at end.

2002—Subsec. (a). Pub. L. 107–210, § 111(a), substituted ''October 1, 2001, and ending September 30, 2007,'' for ''October 1, 1998, and ending September 30, 2001,''.

Subsec. (b). Pub. L. 107–210, § 120, amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''There are authorized to be appropriated to the Department of Labor, for the period be-

ginning October 1, 2001, and ending September 30, 2007, such sums as may be necessary to carry out the purposes of subpart D of this part.''

Pub. L. 107–210, §111(a), substituted ''October 1, 2001, and ending September 30, 2007,'' for ''October 1, 1998, and ending September 30, 2001,''.

1999—Subsecs. (a), (b). Pub. L. 106–113 substituted ''September 30, 2001'' for ''June 30, 1999''.

1998—Subsec. (a). Pub. L. 105–277, §1012(a)(1), substituted ''for the period beginning October 1, 1998, and ending June 30, 1999,'' for ''for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998,''.

Subsec. (b). Pub. L. 105–277, §1012(a)(2), substituted ''for the period beginning October 1, 1998, and ending June 30, 1999,'' for ''for each of fiscal years 1994, 1995, 1996, 1997, and 1998,''.

1993—Pub. L. 103–182 designated existing provisions as subsec. (a), inserted heading and '', other than subpart D'' after ''this part'', and added subsec. (b).

Pub. L. 103–66 substituted ''1993, 1994, 1995, 1996, 1997, and 1998'' for ''1988, 1989, 1990, 1991, 1992, and 1993''.

1988—Pub. L. 100–418 substituted ''1988, 1989, 1990, 1991, 1992, and 1993'' for ''1986, 1987, 1988, 1989, 1990, and 1991''.

1986—Pub. L. 99–272 substituted ''1986, 1987, 1988, 1989, 1990, and 1991'' for ''1982 through 1985''.

1983—Pub. L. 98–120 substituted ''each of the fiscal years 1982 through 1985'' for ''each of fiscal years 1982 and 1983''.

1981—Pub. L. 97–35 substituted provisions relating to authorization of appropriations for fiscal years 1982 and 1983 for provisions relating to establishment of the Adjustment Assistance Trust Fund.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–89, §1(e), Sept. 28, 2007, 121 Stat. 982, provided that: ''The amendments made by this section [amending this section and sections 2346 and 2401g of this title and provisions set out as a note preceding section 2271 of this title] shall be effective as of October 1, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Aug. 17, 2006, see section 1641 of Pub. L. 109–280, set out as a note under section 58c of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under this part or part 3 of this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(5) [title VII, §702(e)], Nov. 29, 1999, 113 Stat. 1536, 1501A–319, provided that: ''The amendments made by this section [amending this section and sections 2331 and 2346 of this title and provisions set out as a note preceding section 2271 of this title] shall be effective as of July 1, 1999.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 506(a) of Pub. L. 103–182, set out as a note under section 2271 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Parts 2 and 3 of this subchapter applicable as if the amendment of this section by Pub. L. 99–272 had taken effect Dec. 18, 1985, see section 13009(c) of Pub. L. 99–272, set out as a note under section 2291 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT AND TRANSITION PROVISIONS

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, with transition provisions applicable, see section 2514 of Pub. L. 97–35, set out as a note under section 2291 of this title.

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2318. Demonstration project for alternative trade adjustment assistance for older workers

(a) In general

(1) Establishment

Not later than 1 year after August 6, 2002, the Secretary shall establish an alternative trade adjustment assistance program for older workers that provides the benefits described in paragraph (2).

(2) Benefits

(A) Payments

A State shall use the funds provided to the State under section 2313 of this title to pay, for a period not to exceed 2 years, to a worker described in paragraph (3)(B), 50 percent of the difference between—

(i) the wages received by the worker from reemployment; and

(ii) the wages received by the worker at the time of separation.

(B) Health insurance

A worker described in paragraph (3)(B) participating in the program established under paragraph (1) is eligible to receive, for a period not to exceed 2 years, a credit for health insurance costs under section 35 of title 26, as added by section 201 of the Trade Act of 2002.

(3) Eligibility

(A) Firm eligibility

(i) In general

The Secretary shall provide the opportunity for a group of workers on whose behalf a petition is filed under section 2271 of this title to request that the group of workers be certified for the alternative trade adjustment assistance program under this section at the time the petition is filed.

(ii) Criteria

In determining whether to certify a group of workers as eligible for the alternative trade adjustment assistance program, the Secretary shall consider the following criteria:

(I) Whether a significant number of workers in the workers' firm are 50 years of age or older.

(II) Whether the workers in the workers' firm possess skills that are not easily transferable.

(III) The competitive conditions within the workers' industry.

(iii) Deadline

The Secretary shall determine whether the workers in the group are eligible for

the alternative trade adjustment assistance program by the date specified in section 2273(a) of this title.

(B) Individual eligibility

A worker in the group that the Secretary has certified as eligible for the alternative trade adjustment assistance program may elect to receive benefits under the alternative trade adjustment assistance program if the worker—

(i) is covered by a certification under subpart A of this part;

(ii) obtains reemployment not more than 26 weeks after the date of separation from the adversely affected employment;

(iii) is at least 50 years of age;

(iv) earns not more than $50,000 a year in wages from reemployment;

(v) is employed on a full-time basis as defined by State law in the State in which the worker is employed; and

(vi) does not return to the employment from which the worker was separated.

(4) Total amount of payments

The payments described in paragraph (2)(A) made to a worker may not exceed $10,000 per worker during the 2-year eligibility period.

(5) Limitation on other benefits

Except as provided in paragraph (2)(B), if a worker is receiving payments pursuant to the program established under paragraph (1), the worker shall not be eligible to receive any other benefits under this subchapter.

(b) Termination

(1) In general

Except as provided in paragraph (2), no payments may be made by a State under the program established under subsection (a)(1) of this section after the date that is 5 years after the date on which such program is implemented by the State.

(2) Exception

Notwithstanding paragraph (1), a worker receiving payments under the program established under subsection (a)(1) of this section on the termination date described in paragraph (1) shall continue to receive such payments if the worker meets the criteria described in subsection (a)(3)(B) of this section.

(Pub. L. 93–618, title II, §246, as added Pub. L. 107–210, div. A, title I, §124(a), Aug. 6, 2002, 116 Stat. 944; amended Pub. L. 108–429, title II, §2004(a)(7), Dec. 3, 2004, 118 Stat. 2590.)

PRIOR PROVISIONS

A prior section 2318, Pub. L. 93–618, title II, §246, as added Pub. L. 100–418, title I, §1423(d)(1), Aug. 23, 1988, 102 Stat. 1246; amended Pub. L. 101–382, title I, §136, Aug. 20, 1990, 104 Stat. 652, related to supplemental wage allowance demonstration projects, prior to repeal by Pub. L. 107–210, div. A, title I, §§124(a), 151, Aug. 6, 2002, 116 Stat. 944, 953, applicable to petitions for certification filed under this part or part 3 of this subchapter on or after the date that is 90 days after Aug. 6, 2002.

Another prior section 2318, Pub. L. 93–618, title II, §246, Jan. 3, 1975, 88 Stat. 2027, contained transition provisions for events taking place during specified periods prior to the effective date of this part, prior to repeal by Pub. L. 97–35, title XXV, §2513(c), Aug. 13, 1981, 95 Stat. 889.

AMENDMENTS

2004—Subsec. (a)(3)(B)(iii). Pub. L. 108–429, §2004(a)(7)(A), struck out ''and'' after semicolon.

Subsec. (a)(5). Pub. L. 108–429, §2004(a)(7)(B), substituted ''paragraph (2)(B)'' for ''section 2298(a)(2)(B) of this title''.

Subsec. (b)(2). Pub. L. 108–429, §2004(a)(7)(C), substituted ''if'' for ''provided that''.

EFFECTIVE DATE

Section applicable to petitions for certification filed under this part or part 3 of this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as an Effective Date of 2002 Amendment note preceding section 2271 of this title.

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2319. Definitions

For purposes of this part—

(1) The term ''adversely affected employment'' means employment in a firm or appropriate subdivision of a firm, if workers of such firm or subdivision are eligible to apply for adjustment assistance under this part.

(2) The term ''adversely affected worker'' means an individual who, because of lack of work in adversely affected employment—

(A) has been totally or partially separated from such employment, or

(B) has been totally separated from employment with the firm in a subdivision of which such adversely affected employment exists.

(3) Repealed. Pub. L. 97–35, title XXV, §2511(1), Aug. 13, 1981, 95 Stat. 888.

(4) The term ''average weekly wage'' means one-thirteenth of the total wages paid to an individual in the high quarter. For purposes of this computation, the high quarter shall be that quarter in which the individual's total wages were highest among the first 4 of the last 5 completed calendar quarters immediately before the quarter in which occurs the week with respect to which the computation is made. Such week shall be the week in which total separation occurred, or, in cases where partial separation is claimed, an appropriate week, as defined in regulations prescribed by the Secretary.

(5) The term ''average weekly hours'' means the average hours worked by the individual (excluding overtime) in the employment from which he has been or claims to have been separated in the 52 weeks (excluding weeks during which the individual was sick or on vacation) preceding the week specified in the last sentence of paragraph (4).

(6) The term ''partial separation'' means, with respect to an individual who has not been totally separated, that he has had—

(A) his hours of work reduced to 80 percent or less of his average weekly hours in adversely affected employment, and

(B) his wages reduced to 80 percent or less of his average weekly wage in such adversely affected employment.

(7) Repealed. Pub. L. 97–35, title XXV, § 2511(1), Aug. 13, 1981, 95 Stat. 888.

(8) The term ''State'' includes the District of Columbia and the Commonwealth of Puerto Rico; and the term ''United States'' when used in the geographical sense includes such Commonwealth.

(9) The term ''State agency'' means the agency of the State which administers the State law.

(10) The term ''State law'' means the unemployment insurance law of the State approved by the Secretary of Labor under section 3304 of title 26.

(11) The term ''total separation'' means the layoff or severance of an individual from employment with a firm in which, or in a subdivision of which, adversely affected employment exists.

(12) The term ''unemployment insurance'' means the unemployment compensation payable to an individual under any State law or Federal unemployment compensation law, including chapter 85 of title 5 and the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.]. The terms ''regular compensation'', ''additional compensation'', and ''extended compensation'' have the same respective meanings that are given them in section 205(2), (3), and (4) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

(13) The term ''week'' means a week as defined in the applicable State law.

(14) The term ''week of unemployment'' means a week of total, part-total, or partial unemployment as determined under the applicable State law or Federal unemployment insurance law.

(15) The term ''benefit period'' means, with respect to an individual—

(A) the benefit year and any ensuing period, as determined under applicable State law, during which the individual is eligible for regular compensation, additional compensation, or extended compensation, or

(B) the equivalent to such a benefit year or ensuing period provided for under the applicable Federal unemployment insurance law.

(16) The term ''on-the-job training'' means training provided by an employer to an individual who is employed by the employer.

(17)(A) The term ''job search program'' means a job search workshop or job finding club.

(B) The term ''job search workshop'' means a short (1 to 3 days) seminar designed to provide participants with knowledge that will enable the participants to find jobs. Subjects are not limited to, but should include, labor market information, resume writing, interviewing techniques, and techniques for finding job openings.

(C) The term ''job finding club'' means a job search workshop which includes a period (1 to 2 weeks) of structured, supervised activity in which participants attempt to obtain jobs.

(Pub. L. 93–618, title II, § 247, Jan. 3, 1975, 88 Stat. 2028; Pub. L. 97–35, title XXV, § 2511, Aug. 13, 1981, 95 Stat. 888; Pub. L. 99–272, title XIII, §§ 13004(b), 13005(b), Apr. 7, 1986, 100 Stat. 303.)

REFERENCES IN TEXT

The Railroad Unemployment Insurance Act, referred to in par. (12), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§ 351 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1986—Pars. (16), (17). Pub. L. 99–272 added pars. (16) and (17).

1981—Par. (3). Pub. L. 97–35, § 2511(1), struck out par. (3) defining ''average weekly manufacturing wage''.

Par. (7). Pub. L. 97–35, § 2511(1), struck out par. (7) defining ''remuneration''.

Par. (12). Pub. L. 97–35, § 2511(2), revised par. (12) generally, inserting definitions of ''regular compensation'', ''additional compensation'', and ''extended compensation''.

Par. (14). Pub. L. 97–35, § 2511(3), substituted provisions requiring determination under the applicable State law or Federal unemployment insurance law for provisions requiring computation applying percent of average weekly wage and time spent prior to separation.

Par. (15). Pub. L. 97–35, § 2511(4), added par. (15).

EFFECTIVE DATE OF 1981 AMENDMENT AND TRANSITION PROVISIONS

Amendment by Pub. L. 97–35 applicable to allowances payable for weeks of unemployment which begin after Sept. 30, 1981, with transition provisions applicable, see section 2514 of Pub. L. 97–35, set out as a note under section 2291 of this title.

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2320. Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this part.

(Pub. L. 93–618, title II, § 248, Jan. 3, 1975, 88 Stat. 2029.)

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2321. Subpena power

(a) Subpena by Secretary

The Secretary may require by subpena the attendance of witnesses and the production of evidence necessary for him to make a determination under the provisions of this part.

(b) Court order

If a person refuses to obey a subpena issued under subsection (a) of this section, a United States district court within the jurisdiction of which the relevant proceeding under this part is conducted may, upon petition by the Secretary, issue an order requiring compliance with such subpena.

(Pub. L. 93–618, title II, § 249, Jan. 3, 1975, 88 Stat. 2029.)

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2322. Repealed. Pub. L. 107–210, div. A, title I, § 123(b)(2), Aug. 6, 2002, 116 Stat. 944

Section, Pub. L. 93–618, title II, § 249A, as added Pub. L. 103–182, title V, § 503(c), Dec. 8, 1993, 107 Stat. 2151, prohibited assistance relating to a separation pursuant to certifications under both subparts A and D of this part.

PRIOR PROVISIONS

A prior section 2322, Pub. L. 93–618, title II, § 250, Jan. 3, 1975, 88 Stat. 2029, provided for judicial review for workers or groups aggrieved by a final determination by the Secretary under section 2273 of this title, prior to repeal by Pub. L. 96–417, title VI, § 612, title VII, § 701(a), Oct. 10, 1980, 94 Stat. 1746, 1747, effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date. See section 2395 of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to petitions filed under this part on or after the date that is 90 days after Aug. 6, 2002, except with respect to certain workers, see section 123(c) of Pub. L. 107–210, set out as a note under section 2331 of this title.

SUBPART D—NAFTA TRANSITIONAL ADJUSTMENT ASSISTANCE PROGRAM

§ 2331. Repealed. Pub. L. 107–210, div. A, title I, § 123(a), Aug. 6, 2002, 116 Stat. 944

Section, Pub. L. 93–618, title II, § 250, as added Pub. L. 103–182, title V, § 502, Dec. 8, 1993, 107 Stat. 2149; amended Pub. L. 105–277, div. J, title I, § 1012(b), Oct. 21, 1998, 112 Stat. 2681–901; Pub. L. 106–113, div. B, § 1000(a)(5) [title VII, § 702(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–319, established a NAFTA transitional adjustment assistance program.

PRIOR PROVISIONS

A prior section 250 of Pub. L. 93–618, title II, Jan. 3, 1975, 88 Stat. 2029, provided for judicial review for workers or groups aggrieved by a final determination by the Secretary under section 2273 of this title, and was classified to section 2322 of this title, prior to repeal by Pub. L. 96–417.

EFFECTIVE DATE OF REPEAL

Pub. L. 107–210, div. A, title I, § 123(c), Aug. 6, 2002, 116 Stat. 944, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending sections 2275 and 2395 of this title and repealing this subpart and section 2322 of this title] shall apply with respect to petitions filed under chapter 2 of title II of the Trade Act of 1974 [this part], on or after the date that is 90 days after the date of enactment of this Act [Aug. 6, 2002].

''(2) WORKERS CERTIFIED AS ELIGIBLE BEFORE EFFECTIVE DATE.—Notwithstanding subsection (a), a worker receiving benefits under chapter 2 of title II of the Trade Act of 1974 shall continue to receive (or be eligible to receive) benefits and services under chapter 2 of title II of the Trade Act of 1974, as in effect on the day before the amendments made by this section take effect under subsection (a), for any week for which the worker meets the eligibility requirements of such chapter 2 as in effect on such date.''

PART 3—ADJUSTMENT ASSISTANCE FOR FIRMS

TERMINATION DATE

No technical assistance to be provided under this part after Dec. 31, 2007, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2341. Petitions and determinations

(a) Filing of petition; receipt of petition; initiation of investigation

A petition for a certification of eligibility to apply for adjustment assistance under this part may be filed with the Secretary of Commerce (hereinafter in this part referred to as the ''Secretary'') by a firm (including any agricultural firm) or its representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

(b) Public hearing

If the petitioner, or any other person, organization, or group found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary's publication under subsection (a) of this section a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

(c) Certification

(1) The Secretary shall certify a firm (including any agricultural firm) as eligible to apply for adjustment assistance under this part if the Secretary determines—

(A) that a significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated,

(B) that—

(i) sales or production, or both, of such firm have decreased absolutely, or

(ii) sales or production, or both, of an article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely, and

(C) increases of imports of articles like or directly competitive with articles which are produced by such firm contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

(2) For purposes of paragraph (1)(C)—

(A) The term ''contributed importantly'' means a cause which is important but not necessarily more important than any other cause.

(B)(i) Any firm which engages in exploration or drilling for oil or natural gas shall be considered to be a firm producing oil or natural gas.

(ii) Any firm that engages in exploration or drilling for oil or natural gas, or otherwise produces oil or natural gas, shall be considered to be producing articles directly competitive with imports of oil and with imports of natural gas.

(d) Allowable period for determination

A determination shall be made by the Secretary as soon as possible after the date on which the petition is filed under this section, but in any event not later than 60 days after that date.

(Pub. L. 93–618, title II, § 251, Jan. 3, 1975, 88 Stat. 2030; Pub. L. 99–272, title XIII, § 13002(b), Apr. 7, 1986, 100 Stat. 300; Pub. L. 100–418, title I, § 1421(a)(2), (b)(2), Aug. 23, 1988, 102 Stat. 1243, 1244.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–418, § 1421(a)(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Secretary shall certify a firm (including any agricultural firm) as eligible to apply for adjustment assistance under this part if he determines—

''(1) that a significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated.

''(2) that—

''(A) sales or production, or both, of the firm have decreased absolutely, or

''(B) sales or production, or both, of an article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely, and

''(3) that increases of imports of articles like or directly competitive with articles produced by such firm contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term 'contributed importantly' means a cause which is important but not necessarily more important than any other cause.''

Subsec. (c)(1)(C). Pub. L. 100–418, § 1421(b)(2), directed the general amendment of subpar. (C) adding provisions relating to provision of essential goods or services by such firm, which amendment did not become effective pursuant to section 1430(d) of Pub. L. 100–418, as amended, set out as an Effective Date note under section 2397 of this title.

1986—Subsecs. (a), (c). Pub. L. 99–272, § 13002(b)(1), inserted ''(including any agricultural firm)'' after ''firm''.

Subsec. (c)(2). Pub. L. 99–272, § 13002(b)(2), amended par. (2) generally, designating existing provisions as subpar. (A), substituting ''of the firm have decreased absolutely, or'' for ''of such firm have decreased absolutely, and'', and adding subpar. (B).

TERMINATION DATE

No technical assistance to be provided under this part after Dec. 31, 2007, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2342. Approval of adjustment proposals

(a) Application for adjustment assistance

A firm certified under section 2341 of this title as eligible to apply for adjustment assistance may, at any time within 2 years after the date of such certification, file an application with the Secretary for adjustment assistance under this part. Such application shall include a proposal for the economic adjustment of such firm.

(b) Technical assistance

(1) Adjustment assistance under this part consists of technical assistance. The Secretary shall approve a firm's application for adjustment assistance only if the Secretary determines that the firm's adjustment proposal—

(A) is reasonably calculated to materially contribute to the economic adjustment of the firm,

(B) gives adequate consideration to the interests of the workers of such firm, and

(C) demonstrates that the firm will make all reasonable efforts to use its own resources for economic development.

(2) The Secretary shall make a determination as soon as possible after the date on which an application is filed under this section, but in no event later than 60 days after such date.

(c) Termination of certification of eligibility

Whenever the Secretary determines that any firm no longer requires assistance under this part, he shall terminate the certification of eligibility of such firm and promptly have notice of such termination published in the Federal Register. Such termination shall take effect on the termination date specified by the Secretary.

(Pub. L. 93–618, title II, § 252, Jan. 3, 1975, 88 Stat. 2030; Pub. L. 99–272, title XIII, § 13006(a)(1), (2), Apr. 7, 1986, 100 Stat. 304.)

AMENDMENTS

1986—Subsec. (b)(1). Pub. L. 99–272, § 13006(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Adjustment assistance under this part consists of technical assistance and financial assistance, which may be furnished singly or in combination. The Secretary shall approve a firm's application for adjustment assistance only if he determines—

''(A) that the firm has no reasonable access to financing through the private capital market, and

''(B) that the firm's adjustment proposal—

''(i) is reasonably calculated materially to contribute to the economic adjustment of the firm,

''(ii) gives adequate consideration to the interests of the workers of such firm, and

''(iii) demonstrates that the firm will make all reasonable efforts to use its own resources for economic development.''

Subsecs. (c), (d). Pub. L. 99–272, § 13006(a)(2), redesignated subsec. (d) as (c) and struck out former subsec. (c) which authorized the Secretary to assist an eligible firm in the preparation of a viable adjustment proposal.

TERMINATION DATE

No technical assistance to be provided under this part after Dec. 31, 2007, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2343. Technical assistance

(a) Discretion of Secretary; types of assistance

The Secretary may provide a firm, on terms and conditions as the Secretary determines to be appropriate, with such technical assistance as in his judgment will carry out the purposes of this part with respect to the firm. The technical assistance furnished under this part may consist of one or more of the following:

(1) Assistance to a firm in preparing its petition for certification of eligibility under section 2341 of this title.

(2) Assistance to a certified firm in developing a proposal for its economic adjustment.

(3) Assistance to a certified firm in the implementation of such a proposal.

(b) Utilization of existing agencies, private individuals, etc., in furnishing assistance; grants to intermediary organizations

(1) The Secretary shall furnish technical assistance under this part through existing agencies and through private individuals, firms, or institutions (including private consulting services), or by grants to intermediary organizations (including Trade Adjustment Assistance Centers).

(2) In the case of assistance furnished through private individuals, firms, or institutions (including private consulting services), the Secretary may share the cost thereof (but not more than 75 percent of such cost for assistance described in paragraph (2) or (3) of subsection (a) of this section may be borne by the United States).

(3) The Secretary may make grants to intermediary organizations in order to defray up to 100 percent of administrative expenses incurred in providing such technical assistance to a firm.

(Pub. L. 93–618, title II, § 253, Jan. 3, 1975, 88 Stat. 2031; Pub. L. 97–35, title XXV, § 2521, Aug. 13, 1981, 95 Stat. 890; Pub. L. 99–272, title XIII, § 13006(a)(3), Apr. 7, 1986, 100 Stat. 304.)

AMENDMENTS

1986—Subsec. (b)(2). Pub. L. 99–272 substituted ''such cost for assistance described in paragraph (2) or (3) of subsection (a) of this section'' for ''such cost''.

1981—Subsec. (a). Pub. L. 97–35 amended subsec. (a) generally, incorporating provisions formerly contained in subsec. (b) and, in those provisions, substituted discretionary language for non-discretionary language relating to the assistance furnished and allowed the giving of assistance to firms in the preparation of their petitions for certification of eligibility under section 2341 of this title.

Subsec. (b). Pub. L. 97–35 amended subsec. (b) generally, incorporating in pars. (1) and (2) provisions formerly contained in subsec. (c), inserted reference to grants to intermediary organizations (including Trade Adjustment Assistance Centers) in par. (1), and added par. (3). Provisions formerly contained in subsec. (b) were transferred to subsec. (a).

Subsec. (c). Pub. L. 97–35 struck out subsec. (c) and transferred the provisions to subsec. (b)(1) and (2).

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2529 of Pub. L. 97–35 provided that:

''(a) Subject to subsection (b), the amendments made by this subtitle [subtitle B (§§ 2521–2529) of title XXV of Pub. L. 97–35, enacting section 2355 of this title, amending this section and sections 2344 to 2347 of this title, and repealing section 2353 of this title] shall take effect on the date of the enactment of this Act [Aug. 13, 1981].

''(b) Applications for adjustment assistance under chapter 3 of title II of the Trade Act of 1974 [this part] which the Secretary of Commerce accepted for processing before the date of the enactment of this Act [Aug. 13, 1981] shall continue to be processed in accordance with the requirements of such chapter as in effect before such date of enactment.''

TERMINATION DATE

No technical assistance to be provided under this part after Dec. 31, 2007, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2344. Financial assistance

(a) Direct loans and guarantees of loans

The Secretary may provide to a firm, on such terms and conditions as he determines to be appropriate, such financial assistance in the form of direct loans or guarantees of loans as in his judgment will materially contribute to the economic adjustment of the firm. The assumption of an outstanding indebtedness of the firm, with or without recourse, shall be considered to be the making of a loan for purposes of this section.

(b) Allowable purposes

Loans or guarantees of loans shall be made under this part only for the purpose of making funds available to the firm—

(1) for acquisition, construction, installation, modernization, development, conversion, or expansion of land, plant, buildings, equipment, facilities, or machinery, or

(2) to supply such working capital as may be necessary to enable the firm to implement its adjustment proposal.

(c) Limitation on direct loans

No direct loan may be provided to a firm under this part if the firm can obtain loan funds from private sources (with or without a guarantee) at a rate no higher than the maximum interest per annum that a participating financial institution may establish on guaranteed loans made pursuant to section 636(a) of title 15.

(d) Limitations on loans and guarantees

Notwithstanding any other provision of this part, no direct loans or guarantees of loans may be made under this part after April 7, 1986.

(Pub. L. 93–618, title II, § 254, Jan. 3, 1975, 88 Stat. 2031; Pub. L. 97–35, title XXV, § 2522, Aug. 13, 1981, 95 Stat. 891; Pub. L. 99–272, title XIII, § 13006(b), Apr. 7, 1986, 100 Stat. 304.)

AMENDMENTS

1986—Subsec. (d). Pub. L. 99–272 added subsec. (d).

1981—Subsec. (c). Pub. L. 97–35 substituted provisions relating to limitation on direct loans on the basis of interest rates on loans under section 636(a) of title 15 for provisions relating to limitation on direct loans on the basis of interest rates under section 2345(b) of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, except as otherwise provided with respect to applications for adjustment assistance, see section 2529 of Pub. L. 97–35, set out as a note under section 2343 of this title.

TERMINATION DATE

No technical assistance to be provided under this part after Dec. 31, 2007, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2345. Conditions for financial assistance

(a) Unavailability of firm's resources; reasonable assurance of repayment

No financial assistance shall be provided under this part unless the Secretary determines—

(1) that the funds required are not available from the firm's own resources; and

(2) that there is reasonable assurance of repayment of the loan.

(b) Interest rates

(1) The rate of interest on direct loans made under this part shall be—

(A) a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods of maturity that are comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 percent, plus

(B) an amount adequate in the judgment of the Secretary of Commerce to cover administrative costs and probable losses under the program.

(2) The Secretary may not guarantee any loan under this part if—

(A) the rate of interest on either the portion to be guaranteed, or the portion not to be guaranteed, is determined by the Secretary to be excessive when compared with other loans bearing Federal guarantees and subject to similar terms and conditions, and

(B) the interest on the loan is exempt from Federal income taxation under section 103 of title 26.

(c) Maturity of loans

The Secretary shall make no loan or guarantee of a loan under section 2344(b)(1) of this title having a maturity in excess of 25 years or the useful life of the fixed assets (whichever period is shorter), including renewals and extensions; and shall make no loan or guarantee of a loan under section 2344(b)(2) of this title having a maturity in excess of 10 years, including extensions and renewals. Such limitations on maturities shall not, however, apply—

(1) to securities or obligations received by the Secretary as claimant in bankruptcy or equitable reorganization, or as creditor in other proceedings attendant upon insolvency of the obligor, or

(2) to an extension or renewal for an additional period not exceeding 10 years, if the Secretary determines that such extension or renewal is reasonably necessary for the orderly liquidation or servicing of the loan.

(d) Priority for small firms; servicing of loans

(1) In making guarantees of loans, and in making direct loans, the Secretary shall give priority to firms which are small within the meaning of the Small Business Act [15 U.S.C. 631 et seq.] (and regulations promulgated thereunder).

(2) For any direct loan made, or any loan guaranteed, under the authority of this part, the Secretary may enter into arrangements for the servicing, including foreclosure, of such loans or evidences of indebtedness on terms which are reasonable and which protect the financial interests of the United States.

(e) Loan guarantee conditions

The following conditions apply with respect to any loan guaranteed under this part:

(1) No guarantee may be made for an amount which exceeds 90 percent of the outstanding balance of the unpaid principal and interest on the loan.

(2) The loan may be evidenced by multiple obligations for the guaranteed and nonguaranteed portions of the loan.

(3) The guarantee agreement shall be conclusive evidence of the eligibility of any obligation guaranteed thereunder for such guarantee, and the validity of any guarantee agreement shall be incontestable, except for fraud or misrepresentation by the holder.

(f) Operating reserves

The Secretary shall maintain operating reserves with respect to anticipated claims under guarantees made under this part. Such reserves shall be considered to constitute obligations for purposes of sections 1108(c) and (d), 1501, and 1502(a) of title 31.

(g) Fees to lenders which make loan guarantees

The Secretary may charge a fee to a lender which makes a loan guaranteed under this part in such amount as is necessary to cover the cost of administration of such guarantee.

(h) Maximum aggregate amount of outstanding guaranteed or direct loans

(1) The aggregate amount of loans made to any firm which are guaranteed under this part and which are outstanding at any time shall not exceed $3,000,000.

(2) The aggregate amount of direct loans made to any firm under this part which are outstanding at any time shall not exceed $1,000,000.

(i) Preference for firms having employee stock ownership plans

(1) When considering whether to grant a direct loan or to guarantee a loan to a corporation which is otherwise certified under section 2341 of this title, the Secretary shall give preference to a corporation which agrees with respect to such loan to fulfill the following requirements—

(A) 25 percent of the principal amount of the loan is paid by the lender to a qualified trust established under an employee stock ownership plan established and maintained by the recipient corporation, by a parent or subsidiary of such corporation, or by several corporations including the recipient corporation,

(B) the employee stock ownership plan meets the requirements of this subsection, and

(C) the agreement among the recipient corporation, the lender, and the qualified trust relating to the loan meets the requirements of this section.

(2) An employee stock ownership plan does not meet the requirements of this subsection unless the governing instrument of the plan provides that—

(A) the amount of the loan paid under paragraph (1)(A) to the qualified trust will be used to purchase qualified employer securities,

(B) the qualified trust will repay to the lender the amount of such loan, together with the interest thereon, out of amounts contributed to the trust by the recipient corporation, and

(C) from time to time, as the qualified trust repays such amount, the trust will allocate qualified employer securities among the individual accounts of participants and their beneficiaries in accordance with the provisions of paragraph (4).

(3) The agreement among the recipient corporation, the lender, and the qualified trust does not meet the requirements of this subsection unless—

(A) it is unconditionally enforceable by any party against the others, jointly and severally,

(B) it provides that the liability of the qualified trust to repay loan amounts paid to the qualified trust may not, at any time, exceed an amount equal to the amount of contributions required under paragraph (2)(B) which are actually received by such trust,

(C) it provides that amounts received by the recipient corporation from the qualified trust for qualified employer securities purchased for the purpose of this subsection will be used exclusively by the recipient corporation for those purposes for which it may use that portion of the loan paid directly to it by the lender,

(D) it provides that the recipient corporation may not reduce the amount of its equity capital during the one year period beginning on the date on which the qualified trust purchases qualified employer securities for purposes of this subsection, and

(E) it provides that the recipient corporation will make contributions to the qualified trust of not less than such amounts as are necessary for such trust to meet its obligation to make repayments of principal and interest on the amount of the loan received by the trust without regard to whether such contributions are deductible by the corporation under section 404 of title 26 and without regard to any other amounts the recipient corporation is obligated under law to contribute to or under the employee stock ownership plan.

(4) At the close of each plan year, an employee stock ownership plan shall allocate to the accounts of participating employees that portion of the qualified employer securities the cost of which bears substantially the same ratio to the cost of all the qualified employer securities purchased under paragraph (2)(A) of this subsection as the amount of the loan principal and interest repaid by the qualified trust during that year bears to the total amount of the loan principal and interest payable by such trust during the term of such loan. Qualified employer securities allocated to the individual account of a participant during one plan year must bear substantially the same proportion to the amount of all such securities allocated to all participants in the plan as the amount of compensation paid to such participant bears to the total amount of compensation paid to all such participants during that year.

(5) For purposes of this subsection, the term—

(A) ''employee stock ownership plan'' means a plan described in section 4975(e)(7) of title 26,

(B) ''qualified trust'' means a trust established under an employee stock ownership plan and meeting the requirements of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] and section 401 of title 26,

(C) ''qualified employer securities'' means common stock issued by the recipient corporation or by a parent or subsidiary of such corporation with voting power and dividend rights no less favorable than the voting power and dividend rights on other common stock issued by the issuing corporation and with voting power being exercised by the participants in the employee stock ownership plan after it is allocated to their plan accounts, and

(D) ''equity capital'' means, with respect to the recipient corporation, the sum of its money and other property (in an amount equal to the adjusted basis of such property but disregarding adjustments made on account of depreciation or amortization made during the period described in paragraph (3)(D)), less the amount of its indebtedness.

(Pub. L. 93–618, title II, § 255, Jan. 3, 1975, 88 Stat. 2031; Pub. L. 97–35, title XXV, § 2523, Aug. 13, 1981, 95 Stat. 891; Pub. L. 98–120, § 4(a), Oct. 12, 1983, 97 Stat. 809; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (d)(1), is Pub. L. 85–536, § 2 (1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§ 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (i)(5)(B), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Title I of the Employee Retirement Income Security Act of 1974 is classified generally to subchapter I (§ 1001 et seq.) of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

CODIFICATION

In subsec. (f), ''sections 1108(c) and (d), 1501, and 1502(a) of title 31'' substituted for ''section 1311 of the Supplemental Appropriation Act, 1955 (31 U.S.C. 200)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1986—Subsecs. (b)(2)(B), (i)(3)(E), (5)(A), (B). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1983—Subsec. (i). Pub. L. 98–120 added subsec. (i).

1981—Subsec. (b). Pub. L. 97–35, § 2523(1), amended subsec. (b) generally, substituting provisions limiting the maximum rate of interest on loans guaranteed under this part on the basis of comparison with other Federally guarantee loans for provisions limiting the maximum interest rate on the basis of 15 U.S.C. 636(a) and inserting provisions prohibiting the guarantee of loans if the interest is tax exempt.

Subsec. (c). Pub. L. 97–35, § 2523(2), inserted references to section 2344 of this title, alternative limitation of useful life of asset, and prohibition of guarantees in excess of 10 years in provisions preceding par. (1) and inserted ''or servicing'' in par. (2).

Subsec. (d). Pub. L. 97–35, § 2523(3), designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 97–35, § 2523(4), substituted provisions respecting conditions applicable to loan guarantees for provisions relating to percentage maximum on loan guarantees which are covered in par. (1).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 4(b) of Pub. L. 98–120 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Oct. 12, 1983].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, except as otherwise provided with respect to applica-

tions for adjustment assistance, see section 2529 of Pub. L. 97–35, set out as a note under section 2343 of this title.

TERMINATION DATE

No technical assistance to be provided under this part after Dec. 31, 2007, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2346. Delegation of functions to Small Business Administration

(a) Delegation of functions as to eligibility certification

In the case of any firm which is small (within the meaning of the Small Business Act [15 U.S.C. 631 et seq.] and regulations promulgated thereunder), the Secretary may delegate all of his functions under this part (other than the functions under sections 2341 and 2342(d)[1] of this title with respect to the certification of eligibility and section 2354 of this title) to the Administrator of the Small Business Administration.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretary $16,000,000 for each of fiscal years 2003 through 2007, and $4,000,000 for the 3-month period beginning on October 1, 2007, to carry out the Secretary's functions under this part in connection with furnishing adjustment assistance to firms. Amounts appropriated under this subsection shall remain available until expended.

(c) Transfer of unexpended appropriations

The unexpended balances of appropriations authorized by section 1912(d)[1] of this title are transferred to the Secretary to carry out his functions under this part.

(Pub. L. 93–618, title II, § 256, Jan. 3, 1975, 88 Stat. 2032; Pub. L. 97–35, title XXV, § 2524, Aug. 13, 1981, 95 Stat. 892; Pub. L. 99–272, title XIII, § 13008(b), Apr. 7, 1986, 100 Stat. 305; Pub. L. 100–418, title I, § 1426(b)(2), Aug. 23, 1988, 102 Stat. 1251; Pub. L. 103–66, title XIII, § 13803(a)(2), Aug. 10, 1993, 107 Stat. 668; Pub. L. 105–277, div. J, title I, § 1012(c), Oct. 21, 1998, 112 Stat. 2681–901; Pub. L. 106–113, div. B, § 1000(a)(5) [title VII, § 702(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–319; Pub. L. 107–210, div. A, title I, §§ 111(b), 131, Aug. 6, 2002, 116 Stat. 936, 946; Pub. L. 108–429, title II, § 2004(a)(3), Dec. 3, 2004, 118 Stat. 2589; Pub. L. 110–89, § 1(b), Sept. 28, 2007, 121 Stat. 982.)

REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (a), is Pub. L. 85–536, § 2 (1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§ 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

Section 2342(d) of this title, referred to in subsec. (a), was redesignated section 2342(c) of this title by Pub. L. 99–272, title XIII, § 13006(a)(2), Apr. 7, 1986, 100 Stat. 304.

Section 1912 of this title, referred to in subsec. (c), was repealed by section 602(e) of Pub. L. 93–618. See section 2341 et seq. of this title for successor provisions.

AMENDMENTS

2007—Subsec. (b). Pub. L. 110–89 inserted ''and $4,000,000 for the 3-month period beginning on October 1, 2007,'' after ''2007,''.

2004—Subsec. (b). Pub. L. 108–429 deemed amendment by Pub. L. 107–210, § 111(b), never to have been enacted. See 2002 Amendment note below.

2002—Subsec. (b). Pub. L. 107–210, § 131, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''There are hereby authorized to be appropriated to the Secretary for the period beginning October 1, 1998, and ending September 30, 2001, such sums as may be necessary to carry out his functions under this part in connection with furnishing adjustment assistance to firms (including, but not limited to, the payment of principal, interest, and reasonable costs incident to default on loans guaranteed by the Secretary under the authority of this part), which sums are authorized to be appropriated to remain available until expended.''

Pub. L. 107–210, § 111(b), substituted ''October 1, 2001, and ending September 30, 2007,'' for ''October 1, 1998, and ending September 30, 2001''. Pub. L. 108–429, title II, § 2004(a)(3), provided that the amendment by Pub. L. 107–210, § 111(b), shall be deemed never to have been enacted.

1999—Subsec. (b). Pub. L. 106–113 substituted ''September 30, 2001'' for ''June 30, 1999''.

1998—Subsec. (b). Pub. L. 105–277 substituted ''for the period beginning October 1, 1998, and ending June 30, 1999'' for ''for fiscal years 1993, 1994, 1995, 1996, 1997, and 1998''.

1993—Subsec. (b). Pub. L. 103–66 substituted ''1993, 1994, 1995, 1996, 1997, and 1998'' for ''1988, 1989, 1990, 1991, 1992, and 1993''.

1988—Subsec. (b). Pub. L. 100–418 substituted ''1988, 1989, 1990, 1991, 1992, and 1993'' for ''1986, 1987, 1988, 1989, 1990, and 1991''.

1986—Subsec. (b). Pub. L. 99–272 inserted ''for fiscal years 1986, 1987, 1988, 1989, 1990, and 1991'' after ''Secretary'', struck out ''from time to time'' after ''as may be necessary'', and struck out ''Direct loans and commitments to guarantee loans may be made under this part during any fiscal year only to such extent and in such amounts as are provided in advance in appropriations Acts.'' after ''available until expended.''

1981—Subsec. (b). Pub. L. 97–35 inserted provisions relating to payment of principal, interest, and reasonable costs, incident to defaults on guaranteed loans and provisions relating to direct loans and commitments to guarantee loans.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–89 effective Oct. 1, 2007, see section 1(e) of Pub. L. 110–89, set out as a note under section 2317 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under this part or part 2 of this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective as of July 1, 1999, see section 1000(a)(5) [title VII, § 702(e)] of Pub. L. 106–113, set out as a note under section 2317 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Parts 2 and 3 of this subchapter applicable as if the amendment of this section by Pub. L. 99–272 had taken effect Dec. 18, 1985, see section 13009(c) of Pub. L. 99–272, set out as a note under section 2291 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, except as otherwise provided with respect to applications for adjustment assistance, see section 2529 of Pub. L. 97–35, set out as a note under section 2343 of this title.

[1] See References in Text note below.

TERMINATION DATE

No technical assistance to be provided under this part after Dec. 31, 2007, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2347. Administration of financial assistance

(a) Powers of Secretary

In making and administering guarantees and loans under section 2344 of this title, the Secretary may—

(1) require security for any such guarantee or loan, and enforce, waive, or subordinate such security;

(2) assign or sell at public or private sale, or otherwise dispose of, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with such guarantees or loans, and collect, compromise, and obtain deficiency judgments with respect to all obligations assigned to or held by him in connection with such guarantees or loans until such time as such obligations may be referred to the Attorney General for suit or collection;

(3) renovate, improve, modernize, complete, insure, rent, sell, or otherwise deal with, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any real or personal property conveyed to or otherwise acquired by him in connection with such guarantees or loans;

(4) acquire, hold, transfer, release, or convey any real or personal property or any interest therein whenever deemed necessary or appropriate, and execute all legal documents for such purposes; and

(5) exercise all such other powers and take all such other acts as may be necessary or incidental to the carrying out of functions pursuant to section 2344 of this title.

(b) Recordation of mortgages

Any mortgage acquired as security under subsection (a) of this section shall be recorded under applicable State law.

(c) Availability of receipts for financing functions

All repayments of loans, payments of interest, and other receipts arising out of transactions entered into by the Secretary pursuant to this part, shall be available for financing functions performed under this part, including administrative expenses in connection with such functions.

(d) Privileged or confidential information

To the extent the Secretary deems it appropriate, and consistent with the provisions of section 552(b)(4) and section 552b(c)(4) of title 5, that portion of any record, material or data received by the Secretary in connection with any application for financial assistance under this part which contains trade secrets or commercial or financial information regarding the operation or competitive position of any business shall be deemed to be privileged or confidential within the meaning of those provisions.

(e) Capital assets secured by first lien; exceptions

Direct loans made, or loans guaranteed, under this part for the acquisition or development of real property or other capital assets shall ordinarily be secured by a first lien on the assets to be financed and shall be fully amortized. To the extent that the Secretary finds that exceptions to these standards are necessary to achieve the objectives of this part, he shall develop appropriate criteria for the protection of the interests of the United States.

(Pub. L. 93–618, title II, § 257, Jan. 3, 1975, 88 Stat. 2033; Pub. L. 97–35, title XXV, § 2525, Aug. 13, 1981, 95 Stat. 892.)

AMENDMENTS

1981—Subsecs. (d), (e). Pub. L. 97–35 added subsecs. (d) and (e).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, except as otherwise provided with respect to applications for adjustment assistance, see section 2529 of Pub. L. 97–35, set out as as a note under section 2343 of this title.

TERMINATION DATE

No technical assistance to be provided under this part after Dec. 31, 2007, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

DEPOSIT OF RECEIPTS FROM TRANSACTIONS UNDER THIS PART INTO ECONOMIC DEVELOPMENT REVOLVING FUND

Pub. L. 100–202, § 101(a) [title I, § 106], Dec. 22, 1987, 101 Stat. 1329, 1329–7, provided that: ''Notwithstanding any other provision of law, including section 257(c) of the Trade Act of 1974, as amended [19 U.S.C. 2347(c)], and section 203 of the Public Works and Economic Development Act of 1965, as amended [42 U.S.C. 3143], principal and interest repayments from loans, proceeds from the sale of loan assets or collateral, and other receipts arising out of transactions entered into pursuant to title II, chapter 3 of the Trade Act of 1974 [19 U.S.C. 2341 et seq.] shall be deposited into the economic development revolving fund established under section 203 of the Public Works and Economic Development Act of 1965 beginning October 1, 1987: *Provided*, That payments of obligations in connection with loans guaranteed under the authority of the Trade Act of 1974 [19 U.S.C. 2101 et seq.] or the Public Works and Economic Development Act of 1965 [42 U.S.C. 3121 et seq.], and any related expenses, shall be made from funds available in the economic development revolving fund: *Provided further*, That deposits to the economic development revolving fund of amounts appropriated for, or received in connection with, activities authorized under the Trade Act of 1974, made prior to October 1, 1987, shall be deemed valid deposits.''

§ 2348. Protective provisions

(a) Recordkeeping

Each recipient of adjustment assistance under this part shall keep records which fully disclose the amount and disposition by such recipient of the proceeds, if any, of such adjustment assistance, and which will facilitate an effective audit. The recipient shall also keep such other records as the Secretary may prescribe.

(b) Audit and examination

The Secretary and the Comptroller General of the United States shall have access for the pur-

pose of audit and examination to any books, documents, papers, and records of the recipient pertaining to adjustment assistance under this part.

(c) Certifications

No adjustment assistance under this part shall be extended to any firm unless the owners, partners, or officers certify to the Secretary—

(1) the names of any attorneys, agents, and other persons engaged by or on behalf of the firm for the purpose of expediting applications for such adjustment assistance; and

(2) the fees paid or to be paid to any such person.

(d) Conflicts of interest

No financial assistance shall be provided to any firm under this part unless the owners, partners, or officers shall execute an agreement binding them and the firm for a period of 2 years after such financial assistance is provided, to refrain from employing, tendering any office or employment to, or retaining for professional services any person who, on the date such assistance or any part thereof was provided, or within 1 year prior thereto, shall have served as an officer, attorney, agent, or employee occupying a position or engaging in activities which the Secretary shall have determined involve discretion with respect to the provision of such financial assistance.

(Pub. L. 93–618, title II, § 258, Jan. 3, 1975, 88 Stat. 2033.)

TERMINATION DATE

No technical assistance to be provided under this part after Dec. 31, 2007, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2349. Penalties

Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, or whoever willfully overvalues any security, for the purpose of influencing in any way a determination under this part, or for the purpose of obtaining money, property, or anything of value under this part, shall be fined not more than $5,000 or imprisoned for not more than 2 years, or both.

(Pub. L. 93–618, title II, § 259, Jan. 3, 1975, 88 Stat. 2034.)

TERMINATION DATE

No technical assistance to be provided under this part after Dec. 31, 2007, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2350. Civil actions

In providing technical and financial assistance under this part the Secretary may sue and be sued in any court of record of a State having general jurisdiction or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against him or his property. Nothing in this section shall be construed to except the activities pursuant to sections 2343 and 2344 of this title from the application of sections 516, 547, and 2679 of title 28.

(Pub. L. 93–618, title II, § 260, Jan. 3, 1975, 88 Stat. 2034.)

TERMINATION DATE

No technical assistance to be provided under this part after Dec. 31, 2007, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2351. "Firm" defined

For purposes of this part, the term ''firm'' includes an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy, and receiver under decree of any court. A firm, together with any predecessor or successor firm, or any affiliated firm controlled or substantially beneficially owned by substantially the same persons, may be considered a single firm where necessary to prevent unjustifiable benefits.

(Pub. L. 93–618, title II, § 261, Jan. 3, 1975, 88 Stat. 2034.)

TERMINATION DATE

No technical assistance to be provided under this part after Dec. 31, 2007, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2352. Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this part.

(Pub. L. 93–618, title II, § 262, Jan. 3, 1975, 88 Stat. 2034.)

TERMINATION DATE

No technical assistance to be provided under this part after Dec. 31, 2007, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2353. Repealed. Pub. L. 97–35, title XXV, § 2526, Aug. 13, 1981, 95 Stat. 893

Section, Pub. L. 93–618, title II, § 263, Jan. 3, 1975, 88 Stat. 2034, contained transitional provisions for certain events occurring prior to the effective date of this part.

EFFECTIVE DATE OF REPEAL

Repeal effective Aug. 13, 1981, except as otherwise provided with respect to applications for adjustment assistance, see section 2529 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 2343 of this title.

§ 2354. Study by Secretary of Commerce when International Trade Commission begins investigation

(a) Subject matter of study

Whenever the Commission begins an investigation under section 2252 of this title with respect to an industry, the Commission shall immediately notify the Secretary of such investigation, and the Secretary shall immediately begin a study of—

(1) the number of firms in the domestic industry producing the like or directly competitive article which have been or are likely to be certified as eligible for adjustment assistance, and

(2) the extent to which the orderly adjustment of such firms to the import competition may be facilitated through the use of existing programs.

(b) Report; publication

The report of the Secretary of the study under subsection (a) of this section shall be made to the President not later than 15 days after the day on which the Commission makes its report under section 2252(f) of this title. Upon making its report to the President, the Secretary shall also promptly make it public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

(c) Information to firms

Whenever the Commission makes an affirmative finding under section 2252(b) of this title that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, the Secretary shall make available, to the extent feasible, full information to the firms in such industry about programs which may facilitate the orderly adjustment to import competition of such firms, and he shall provide assistance in the preparation and processing of petitions and applications of such firms for program benefits.

(Pub. L. 93–618, title II, §264, Jan. 3, 1975, 88 Stat. 2035; Pub. L. 100–418, title I, §1401(b)(1)(B), Aug. 23, 1988, 102 Stat. 1239.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–418 substituted ''section 2252'' for ''section 2251''.

Subsec. (b). Pub. L. 100–418 substituted ''section 2252(f)'' for ''section 2251''.

Subsec. (c). Pub. L. 100–418 substituted ''section 2252(b)'' for ''section 2251(b)''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Aug. 23, 1988, and applicable with respect to investigations initiated under part 1 (§2251 et seq.) of this subchapter on or after that date, see section 1401(c) of Pub. L. 100–418, set out as a note under section 2251 of this title.

TERMINATION DATE

No technical assistance to be provided under this part after Dec. 31, 2007, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§2355. Assistance to industry; authorization of appropriations

(a) Technical assistance

The Secretary may provide technical assistance, on such terms and conditions as the Secretary deems appropriate, for the establishment of industrywide programs for new product development, new process development, export development, or other uses consistent with the purposes of this part. Such technical assistance may be provided through existing agencies, private individuals, firms, universities and institutions, and by grants, contracts, or cooperative agreements to associations, unions, or other nonprofit industry organizations in which a substantial number of firms or workers have been certified as eligible to apply for adjustment assistance under section 2273 or 2341 of this title.

(b) Expenditures

Expenditures for technical assistance under this section may be up to $10,000,000 annually per industry and shall be made under such terms and conditions as the Secretary deems appropriate.

(Pub. L. 93–618, title II, §265, as added Pub. L. 97–35, title XXV, §2527, Aug. 13, 1981, 95 Stat. 893; amended Pub. L. 98–369, div. B, title VI, §2673, July 18, 1984, 98 Stat. 1172.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369, §2673(1), inserted ''or workers'' after ''of firms'' and inserted reference to section 2273 of this title.

Subsec. (b). Pub. L. 98–369, §2673(2), substituted ''$10,000,000'' for ''$2,000,000''.

EFFECTIVE DATE

Section effective Aug. 13, 1981, except as otherwise provided with respect to applications for adjustment assistance, see section 2529 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 2343 of this title.

TERMINATION DATE

No technical assistance to be provided under this part after Dec. 31, 2007, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

PART 4—ADJUSTMENT ASSISTANCE FOR COMMUNITIES

§§2371 to 2374. Omitted

CODIFICATION

Sections 2371 to 2374 were omitted as terminated Sept. 30, 1982, pursuant to section 285 of Pub. L. 93–618, as amended, set out as a Termination Date note preceding section 2271 of this title. Section 285 of Pub. L. 93–618 was amended generally by Pub. L. 107–210 and no longer contains provisions relating to the termination of this part.

Section 2371, Pub. L. 93–618, title II, §271, Jan. 3, 1975, 88 Stat. 2035, related to petitions and determinations.

Section 2372, Pub. L. 93–618, title II, §272, Jan. 3, 1975, 88 Stat. 2036, related to Trade Impacted Area Councils for Adjustment Assistance.

Section 2373, Pub. L. 93–618, title II, §273, Jan. 3, 1975, 88 Stat. 2037, related to program benefits.

Section 2374, Pub. L. 93–618, title II, §274, Jan. 3, 1975, 88 Stat. 2040, related to Community Adjustment Assistance Fund.

PART 5—MISCELLANEOUS PROVISIONS

§2391. GAO study and report

(a) Adjustment assistance programs

The Comptroller General of the United States shall conduct a study of the adjustment assistance programs established under parts 2, 3, and 4 of this subchapter and shall report the results of such study to the Congress no later than January 31, 1980. Such report shall include an evaluation of—

(1) the effectiveness of such programs in aiding workers, firms, and communities to adjust

to changed economic conditions resulting from changes in the patterns of international trade; and

(2) the coordination of the administration of such programs and other Government programs which provide unemployment compensation and relief to depressed areas.

(b) Assistance from Labor and Commerce Departments

In carrying out his responsibilities under this section, the Comptroller General shall, to the extent practical, avail himself of the assistance of the Departments of Labor and Commerce. The Secretaries of Labor and Commerce shall make available to the Comptroller General any assistance necessary for an effective evaluation of the adjustment assistance programs established under this subchapter.

(Pub. L. 93–618, title II, § 280, Jan. 3, 1975, 88 Stat. 2040.)

§ 2392. Adjustment Assistance Coordinating Committee

There is established the Adjustment Assistance Coordinating Committee to consist of a Deputy United States Trade Representative as Chairman, and the officials charged with adjustment assistance responsibilities of the Departments of Labor and Commerce and the Small Business Administration. It shall be the function of the Committee to coordinate the adjustment assistance policies, studies, and programs of the various agencies involved and to promote the efficient and effective delivery of adjustment assistance benefits.

(Pub. L. 93–618, title II, § 281, Jan. 3, 1975, 88 Stat. 2040; 1979 Reorg. Plan No. 3, § 1(c), eff. Jan. 2, 1980, 44 F.R. 69274, 93 Stat. 1381.)

CHANGE OF NAME

''Deputy United States Trade Representative'' substituted in text for ''Deputy Special Trade Representative'', meaning Deputy Special Representative for Trade Negotiations, pursuant to Reorg. Plan No. 3 of 1979, § 1(c), 44 F.R. 69274, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1–107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title. See, also, section 2171 of this title as amended by Pub. L. 97–456.

§ 2393. Trade monitoring system

The Secretary of Commerce and the Secretary of Labor shall establish and maintain a program to monitor imports of articles into the United States which will reflect changes in the volume of such imports, the relation of such imports to changes in domestic production, changes in employment within domestic industries producing articles like or directly competitive with such imports, and the extent to which such changes in production and employment are concentrated in specific geographic regions of the United States. A summary of the information gathered under this section shall be published regularly and provided to the Adjustment Assistance Coordinating Committee, the International Trade Commission, and to the Congress.

(Pub. L. 93–618, title II, § 282, Jan. 3, 1975, 88 Stat. 2040.)

§ 2394. Firms relocating in foreign countries

Before moving productive facilities from the United States to a foreign country, every firm should—

(1) provide notice of the move to its employees who are likely to be totally or partially separated as a result of the move at least 60 days before the date of such move, and

(2) provide notice of the move to the Secretary of Labor and the Secretary of Commerce on the same day it notifies employees under paragraph (1).

(b)[1] It is the sense of the Congress that every such firm should—

(1) apply for and use all adjustment assistance for which it is eligible under this subchapter,

(2) offer employment opportunities in the United States, if any exist, to its employees who are totally or partially separated workers as a result of the move, and

(3) assist in relocating employees to other locations in the United States where employment opportunities exist.

(Pub. L. 93–618, title II, § 283, Jan. 3, 1975, 88 Stat. 2041.)

§ 2395. Judicial review

(a) Petition for review; time and place of filing

A worker, group of workers, certified or recognized union, or authorized representative of such worker or group aggrieved by a final determination of the Secretary of Labor under section 2273 of this title, a firm or its representative or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 2341 of this title, an agricultural commodity producer (as defined in section 2401(2) of this title) aggrieved by a determination of the Secretary of Agriculture under section 2401b of this title, or a community or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 2371[1] of this title may, within sixty days after notice of such determination, commence a civil action in the United States Court of International Trade for review of such determination. The clerk of such court shall send a copy of the summons and the complaint in such action to the Secretary of Labor, the Secretary of Commerce, or the Secretary of Agriculture, as the case may be. Upon receiving a copy of such summons and complaint, such Secretary shall promptly certify and file in such court the record on which he based such determination.

(b) Findings of fact by Secretary; conclusiveness; new or modified findings

The findings of fact by the Secretary of Labor, the Secretary of Commerce, or the Secretary of Agriculture, as the case may be, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to such Secretary to take further evi-

[1] So in original. The first paragraph was not designated subsec. (a).

[1] See References in Text note below.

dence, and such Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) Determination; review by Supreme Court

The Court of International Trade shall have jurisdiction to affirm the action of the Secretary of Labor, the Secretary of Commerce, or the Secretary of Agriculture, as the case may be, or to set such action aside, in whole or in part. The judgment of the Court of International Trade shall be subject to review by the United States Court of Appeals for the Federal Circuit as prescribed by the rules of such court. The judgment of the Court of Appeals for the Federal Circuit shall be subject to review by the Supreme Court of the United States upon certiorari as provided in section 1256[1] of title 28.

(Pub. L. 93–618, title II, §284, as added Pub. L. 96–417, title VI, §613(a), Oct. 10, 1980, 94 Stat. 1746; amended Pub. L. 97–164, title I, §163(a)(5), Apr. 2, 1982, 96 Stat. 49; Pub. L. 103–182, title V, §503(d), Dec. 8, 1993, 107 Stat. 2151; Pub. L. 107–210, div. A, title I, §§123(b)(4), 142(a), Aug. 6, 2002, 116 Stat. 944, 953; Pub. L. 108–429, title II, §2004(a)(11)(A), Dec. 3, 2004, 118 Stat. 2590.)

REFERENCES IN TEXT

Section 2371 of this title, referred to in subsec. (a), was omitted from the Code as terminated Sept. 30, 1982, pursuant to section 285 of Pub. L. 93–618, as amended, set out as a Termination Date note preceding section 2271 of this title.

Section 1256 of title 28, referred to in subsec. (c), was repealed by Pub. L. 97–164, title I, §123, Apr. 2, 1982, 96 Stat. 36.

AMENDMENTS

2004—Pub. L. 108–429, §2004(a)(11)(A), amended directory language of Pub. L. 107–210, §142(a)(1). See 2002 Amendment notes below.

2002—Subsec. (a). Pub. L. 107–210, §142(a)(1), as amended by Pub. L. 108–429, §2004(a)(11)(A), inserted ''an agricultural commodity producer (as defined in section 2401(2) of this title) aggrieved by a determination of the Secretary of Agriculture under section 2401b of this title,'' after ''section 2341 of this title,'' in first sentence and substituted '', the Secretary of Commerce, or the Secretary of Agriculture'' for ''or the Secretary of Commerce'' in second sentence.

Pub. L. 107–210, §123(b)(4), struck out ''or section 2331(c) of this title'' after ''section 2273 of this title''.

Subsecs. (b), (c). Pub. L. 107–210, §142(a)(1)(B), as amended by Pub. L. 108–429, §2004(a)(11)(A)(i), substituted '', the Secretary of Commerce, or the Secretary of Agriculture'' for ''or the Secretary of Commerce''.

1993—Subsec. (a). Pub. L. 103–182 inserted reference to section 2331(c) of this title.

1982—Subsec. (c). Pub. L. 97–164 substituted ''Court of Appeals for the Federal Circuit'' for ''Court of Customs and Patent Appeals''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 123(b)(4) of Pub. L. 107–210 applicable with respect to petitions filed under this part on or after the date that is 90 days after Aug. 6, 2002, except with respect to certain workers, see section 123(c) of Pub. L. 107–210, set out as an Effective Date of Repeal note under section 2331 of this title.

Amendment by section 142(a) of Pub. L. 107–210 effective on the date that is 180 days after Aug. 6, 2002, see section 141(b) of Pub. L. 107–210, set out as an Effective Date note under section 2401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 506(a) of Pub. L. 103–182, set out as a note under section 2271 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(3) of Pub. L. 96–417 set out as an Effective Date of 1980 Amendment note under section 251 of Title 28, Judiciary and Judicial Procedure.

§ 2396. Omitted

Section, Pub. L. 93–618, title II, §286, as added Pub. L. 100–418, title I, §1427(a), Aug. 23, 1988, 102 Stat. 1251, which established the Trade Adjustment Assistance Trust Fund, did not become effective pursuant to section 1430(c) of Pub. L. 100–418, as amended, set out as an Effective Date note under section 2397 of this title.

§ 2397. Omitted

Section, Pub. L. 93–618, title II, §287, as added Pub. L. 100–418, title I, §1428(b), Aug. 23, 1988, 102 Stat. 1255, which imposed an additional fee, did not become effective pursuant to section 1430(b) of Pub. L. 100–418, as amended, set out below.

EFFECTIVE DATE

Section 1430 of Pub. L. 100–418, as amended by Pub. L. 100–647, title IX, §9001(a)(21), Nov. 10, 1988, 102 Stat. 3808, provided that:

''(a) IN GENERAL.—Except as otherwise provided by this section, the amendments made by this part [part 3 (§§1421–1430) of subtitle D of title I of Pub. L. 100–418, enacting this section and sections 2318 and 2396 of this title, amending sections 2272, 2275, 2291 to 2293, 2295, 2296, 2311, 2317, 2341, and 2346 of this title, and amending provisions set out as a note preceding section 2271 of this title] shall take effect on the date of enactment of this Act [Aug. 23, 1988].

''(b) ADDITIONAL FEE.—

''(1) Except as otherwise provided in this subsection, the amendment made by section 1428(b) [enacting this section] shall apply (if at all) to any article entered, or withdrawn from warehouse for consumption, after the date that is 30 days after the earlier of—

''(A) the date on which the President submits to the Congress the written statement described in section 1428(a)(3)(A) [set out as a note below],

''(B) the date that is 2 years after the date of enactment of this Act [Aug. 23, 1988], or

''(C) the date of the enactment of a disapproval resolution that passes both Houses of the Congress within the 90-day period beginning on the date that is 2 years after the date of enactment of this Act.

''(2) If the President determines on the date that is 2 years after the date of enactment of this Act that the fee imposed by the amendment made by section 1428(b) is not in the national economic interest, subparagraph (B) of paragraph (1) shall not be taken into account in applying the provisions of paragraph (1). [See Determination of President of the United States, No. 90–34, set out below.]

''(3) The amendment made by section 1428(b) shall apply (if at all) to the products of any foreign coun-

try described in section 1428(a)(1)(B) [set out as a note below] that are entered, or withdrawn from warehouse for consumption, after the later of—

''(A) the first date on which the fee imposed by such amendment applies with respect to products of foreign countries that are not described in section 1428(a)(1)(B), or

''(B) the date on which the President submits to the Congress the written statement described in section 1428(a)(3)(B) [set out as a note below] certifying the consent of such foreign country to the imposition of the fee.

''(c) TRUST FUND.—The amendments made by section 1427 [enacting section 2396 of this title] shall take effect on the first date on which the amendment made by section 1428(b) [enacting this section] applies with respect to any articles.

''(d) ELIGIBILITY OF WORKERS AND FIRMS.—The amendments made by sections 1421(b) and 1424(b) [amending sections 2272, 2296, and 2341 of this title] shall take effect on the date that is 1 year after the first date on which the amendment made by section 1428(b) [enacting this section] applies with respect to any articles.

''(e) NOTIFICATION REQUIREMENTS.—The amendments made by section 1422 [amending section 2275 of this title] shall take effect on the date that is 30 days after the date of enactment of this Act [Aug. 23, 1988].

''(f) TRAINING REQUIREMENT.—The amendments made by subsections (a), (b)(2), and (c)(2) of section 1423 and by paragraphs (2) and (3) of section 1424(c) [amending sections 2291 to 2293, 2296, and 2311 of this title] shall take effect on the date that is 90 days after the date of enactment of this Act [Aug. 23, 1988].

''(g) LIMITATION ON PERIOD FOR WHICH TRADE READJUSTMENT ALLOWANCES MAY BE MADE.—The amendment made by section 1425(a) [amending section 2293 of this title] shall not apply with respect to any total separation of a worker from adversely affected employment (within the meaning of section 247 of such Act [19 U.S.C. 2319]) that occurs before the date of enactment of this Act [Aug. 23, 1988] if the application of such amendment with respect to such total separation would reduce the period for which such worker would (but for such amendment) be allowed to receive trade readjustment allowances under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 [19 U.S.C. 2291 et seq.].''

IMPOSITION OF SMALL UNIFORM FEE ON ALL IMPORTS

Section 1428(a) of Pub. L. 100–418 provided that:

''(1) The President shall—

''(A) undertake negotiations necessary to achieve changes in the General Agreement on Tariffs and Trade that would allow any country to impose a small uniform fee of not more than 0.15 percent on all imports to such country for the purpose of using the revenue from such fee to fund programs which directly assist adjustment to import competition, and

''(B) undertake negotiations with any foreign country that has entered into a free trade agreement with the United States under subtitle A [§§ 1101 to 1125, of title I of Pub. L. 100–418, see Tables for classification] or under section 102 of the Trade Act of 1974 [19 U.S.C. 2112] to obtain the consent of such country to the imposition of such a fee by the United States.

''(2) In the report that is submitted under section 163 of the Trade Act of 1974 [19 U.S.C. 2213] for 1989 and 1990, the President shall include a statement on the progress of negotiations conducted under paragraph (1).

''(3)(A) On the first day after the date of enactment of this Act [Aug. 23, 1988] on which the General Agreement on Tariffs and Trade allows any country to impose a fee described in paragraph (1), the President shall submit to the Congress, and publish in the Federal Register, a written statement certifying such allowance.

''(B) On the first day after the date of enactment of this Act on which any foreign country described in paragraph (1)(B) consents to the imposition of such a fee by the United States, the President shall submit to the Congress, and publish in the Federal Register, a written statement certifying such consent.

''(4) If—

''(A) the President does not submit to the Congress the written statement described in paragraph (3)(A) before the date that is 2 years after the date of enactment of this Act [Aug. 23, 1988], and

''(B) the President determines on such date that the fee imposed by the amendment made by subsection (b) [enacting this section] is not in the national economic interest,

the President shall submit to the Congress, and publish in the Federal Register, written notice of such determination on such date. [See Determination of President of the United States, No. 90–34, set out below.]

''(5)(A) Any disapproval resolution that is introduced in the Senate or House of Representatives within the 90-day period beginning on the date that is 2 years after the date of enactment of this Act [Aug. 23, 1988] shall, for purposes of section 152 of the Trade Act of 1974 (19 U.S.C. 2192), be treated as a joint resolution described in section 152(a)(1)(A) of such Act.

''(B) For purposes of this part [see Effective Date note above], the term 'disapproval resolution' means a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: 'That the Congress disapproves of the determination made by the President under section 1428(a)(4)(A) of the Omnibus Trade and Competitiveness Act of 1988 [subsec. (a)(4)(A) of this note].'''

DETERMINATION THAT CERTAIN IMPORT FEES ARE NOT IN THE NATIONAL ECONOMIC INTEREST

Determination of President of the United States, No. 90–34, Aug. 23, 1990, 55 F.R. 34889, provided:

Pursuant to section 1428(a)(4)(B) of the Omnibus Trade and Competitiveness Act of 1988 [Pub. L. 100–418, set out above], I determine that it is not in the national economic interest to impose the fee described under subsection (b) of that section [enacting this section].

I hereby authorize and direct the United States Trade Representative to submit to the Congress and publish in the Federal Register written notice of this determination.

GEORGE BUSH.

PART 6—ADJUSTMENT ASSISTANCE FOR FARMERS

TERMINATION DATE

No adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2401. Definitions

In this part:

(1) Agricultural commodity

The term ''agricultural commodity'' means any agricultural commodity (including livestock) in its raw or natural state.

(2) Agricultural commodity producer

The term ''agricultural commodity producer'' has the same meaning as the term ''person'' as prescribed by regulations promulgated under section 1308(e) of title 7.

(3) Contributed importantly

(A) In general

The term ''contributed importantly'' means a cause which is important but not necessarily more important than any other cause.

(B) Determination of contributed importantly

The determination of whether imports of articles like or directly competitive with an agricultural commodity with respect to which a petition under this part was filed contributed importantly to a decline in the price of the agricultural commodity shall be made by the Secretary.

(4) Duly authorized representative

The term ''duly authorized representative'' means an association of agricultural commodity producers.

(5) National average price

The term ''national average price'' means the national average price paid to an agricultural commodity producer for an agricultural commodity in a marketing year as determined by the Secretary.

(6) Secretary

The term ''Secretary'' means the Secretary of Agriculture.

(Pub. L. 93–618, title II, § 291, as added Pub. L. 107–210, div. A, title I, § 141(a), Aug. 6, 2002, 116 Stat. 946; amended Pub. L. 109–280, title XIV, § 1635(f)(4), Aug. 17, 2006, 120 Stat. 1171.)

AMENDMENTS

2006—Par. (2). Pub. L. 109–280 substituted ''1308(e)'' for ''1308(5)''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Aug. 17, 2006, see section 1641 of Pub. L. 109–280, set out as a note under section 58c of this title.

EFFECTIVE DATE

Pub. L. 107–210, div. A, title I, § 141(b), Aug. 6, 2002, 116 Stat. 953, as amended by Pub. L. 108–429, title II, § 2004(a)(10), Dec. 3, 2004, 118 Stat. 2590, provided that: ''The amendments made by this subtitle [subtitle C [§§ 141 to 143] of title I of Pub. L. 107–210, enacting this part and amending section 2395 of this title] shall take effect on the date that is 180 days after the date of enactment of this Act [Aug. 6, 2002].''

TERMINATION DATE

No adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2401a. Petitions; group eligibility

(a) In general

A petition for a certification of eligibility to apply for adjustment assistance under this part may be filed with the Secretary by a group of agricultural commodity producers or by their duly authorized representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that the Secretary has received the petition and initiated an investigation.

(b) Hearings

If the petitioner, or any other person found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary's publication under subsection (a) of this section a request for a hearing, the Secretary shall provide for a public hearing and afford such interested person an opportunity to be present, to produce evidence, and to be heard.

(c) Group eligibility requirements

The Secretary shall certify a group of agricultural commodity producers as eligible to apply for adjustment assistance under this part if the Secretary determines—

(1) that the national average price for the agricultural commodity, or a class of goods within the agricultural commodity, produced by the group for the most recent marketing year for which the national average price is available is less than 80 percent of the average of the national average price for such agricultural commodity, or such class of goods, for the 5 marketing years preceding the most recent marketing year; and

(2) that increases in imports of articles like or directly competitive with the agricultural commodity, or class of goods within the agricultural commodity, produced by the group contributed importantly to the decline in price described in paragraph (1).

(d) Special rule for qualified subsequent years

A group of agricultural commodity producers certified as eligible under section 2401b of this title shall be eligible to apply for assistance under this part in any qualified year after the year the group is first certified, if the Secretary determines that—

(1) the national average price for the agricultural commodity, or class of goods within the agricultural commodity, produced by the group for the most recent marketing year for which the national average price is available is equal to or less than the price determined under subsection (c)(1) of this section; and

(2) the requirements of subsection (c)(2) of this section are met.

(e) Determination of qualified year and commodity

In this part:

(1) Qualified year

The term ''qualified year'', with respect to a group of agricultural commodity producers certified as eligible under section 2401b of this title, means each consecutive year after the year in which the group is certified and in which the Secretary makes the determination under subsection (c) or (d) of this section, as the case may be.

(2) Classes of goods within a commodity

In any case in which there are separate classes of goods within an agricultural commodity, the Secretary shall treat each class as a separate commodity in determining group eligibility, the national average price, and level of imports under this section and section 2401e of this title.

(Pub. L. 93–618, title II, § 292, as added Pub. L. 107–210, div. A, title I, § 141(a), Aug. 6, 2002, 116 Stat. 947.)

TERMINATION DATE

No adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2401b. Determinations by Secretary of Agriculture

(a) In general

As soon as practicable after the date on which a petition is filed under section 2401a of this title, but in any event not later than 40 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section 2401a(c) or (d) of this title, as the case may be, and shall, if the group meets the requirements, issue a certification of eligibility to apply for assistance under this part covering agricultural commodity producers in any group that meets the requirements. Each certification shall specify the date on which eligibility under this part begins.

(b) Notice

Upon making a determination on a petition, the Secretary shall promptly publish a summary of the determination in the Federal Register, together with the Secretary's reasons for making the determination.

(c) Termination of certification

Whenever the Secretary determines, with respect to any certification of eligibility under this part, that the decline in price for the agricultural commodity covered by the certification is no longer attributable to the conditions described in section 2401a of this title, the Secretary shall terminate such certification and promptly cause notice of such termination to be published in the Federal Register, together with the Secretary's reasons for making such determination.

(Pub. L. 93–618, title II, § 293, as added Pub. L. 107–210, div. A, title I, § 141(a), Aug. 6, 2002, 116 Stat. 948.)

TERMINATION DATE

No adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2401c. Study by Secretary of Agriculture when International Trade Commission begins investigation

(a) In general

Whenever the International Trade Commission (in this part referred to as the ''Commission'') begins an investigation under section 2252 of this title with respect to an agricultural commodity, the Commission shall immediately notify the Secretary of the investigation. Upon receipt of the notification, the Secretary shall immediately conduct a study of—

(1) the number of agricultural commodity producers producing a like or directly competitive agricultural commodity who have been or are likely to be certified as eligible for adjustment assistance under this part, and

(2) the extent to which the adjustment of such producers to the import competition may be facilitated through the use of existing programs.

(b) Report

Not later than 15 days after the day on which the Commission makes its report under section 2252(f) of this title, the Secretary shall submit a report to the President setting forth the findings of the study described in subsection (a) of this section. Upon making the report to the President, the Secretary shall also promptly make the report public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of the report published in the Federal Register.

(Pub. L. 93–618, title II, § 294, as added Pub. L. 107–210, div. A, title I, § 141(a), Aug. 6, 2002, 116 Stat. 949.)

TERMINATION DATE

No adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2401d. Benefit information to agricultural commodity producers

(a) In general

The Secretary shall provide full information to agricultural commodity producers about the benefit allowances, training, and other employment services available under this subchapter and about the petition and application procedures, and the appropriate filing dates, for such allowances, training, and services. The Secretary shall provide whatever assistance is necessary to enable groups to prepare petitions or applications for program benefits under this subchapter.

(b) Notice of benefits

(1) In general

The Secretary shall mail written notice of the benefits available under this part to each agricultural commodity producer that the Secretary has reason to believe is covered by a certification made under this part.

(2) Other notice

The Secretary shall publish notice of the benefits available under this part to agricultural commodity producers that are covered by each certification made under this part in newspapers of general circulation in the areas in which such producers reside.

(3) Other Federal assistance

The Secretary shall also provide information concerning procedures for applying for and receiving all other Federal assistance and services available to workers facing economic distress.

(Pub. L. 93–618, title II, § 295, as added Pub. L. 107–210, div. A, title I, § 141(a), Aug. 6, 2002, 116 Stat. 949.)

TERMINATION DATE

No adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this

part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2401e. Qualifying requirements for agricultural commodity producers

(a) In general

(1) Requirements

Payment of a[1] adjustment assistance under this part shall be made to an adversely affected agricultural commodity producer covered by a certification under this part who files an application for such assistance within 90 days after the date on which the Secretary makes a determination and issues a certification of eligibility under section 2401b of this title, if the following conditions are met:

(A) The producer submits to the Secretary sufficient information to establish the amount of agricultural commodity covered by the application filed under this subsection that was produced by the producer in the most recent year.

(B) The producer certifies that the producer has not received cash benefits under any provision of this subchapter other than this part.

(C) The producer's net farm income (as determined by the Secretary) for the most recent year is less than the producer's net farm income for the latest year in which no adjustment assistance was received by the producer under this part.

(D) The producer certifies that the producer has met with an Extension Service employee or agent to obtain, at no cost to the producer, information and technical assistance that will assist the producer in adjusting to import competition with respect to the adversely affected agricultural commodity, including—

(i) information regarding the feasibility and desirability of substituting 1 or more alternative commodities for the adversely affected agricultural commodity; and

(ii) technical assistance that will improve the competitiveness of the production and marketing of the adversely affected agricultural commodity by the producer, including yield and marketing improvements.

(2) Limitations

(A) Adjusted gross income

(i) In general

Notwithstanding any other provision of this part, an agricultural commodity producer shall not be eligible for assistance under this part in any year in which the average adjusted gross income of the producer exceeds the level set forth in section 1308–3a of title 7.

(ii) Certification

To comply with the limitation under subparagraph (A),[2] an individual or entity shall provide to the Secretary—

(I) a certification by a certified public accountant or another third party that is acceptable to the Secretary that the average adjusted gross income of the producer does not exceed the level set forth in section 1308–3a of title 7; or

(II) information and documentation regarding the adjusted gross income of the producer through other procedures established by the Secretary.

(B) Counter-cyclical payments

The total amount of payments made to an agricultural producer under this part during any crop year may not exceed the limitation on counter-cyclical payments set forth in section 1308(c) of title 7.

(C) Definitions

In this subsection:

(i) Adjusted gross income

The term ''adjusted gross income'' means adjusted gross income of an agricultural commodity producer—

(I) as defined in section 62 of title 26 and implemented in accordance with procedures established by the Secretary; and

(II) that is earned directly or indirectly from all agricultural and nonagricultural sources of an individual or entity for a fiscal or corresponding crop year.

(ii) Average adjusted gross income

(I) In general

The term ''average adjusted gross income'' means the average adjusted gross income of a producer for each of the 3 preceding taxable years.

(II) Effective adjusted gross income

In the case of a producer that does not have an adjusted gross income for each of the 3 preceding taxable years, the Secretary shall establish rules that provide the producer with an effective adjusted gross income for the applicable year.

(b) Amount of cash benefits

(1) In general

Subject to the provisions of section 2401g of this title, an adversely affected agricultural commodity producer described in subsection (a) of this section shall be entitled to adjustment assistance under this part in an amount equal to the product of—

(A) one-half of the difference between—

(i) an amount equal to 80 percent of the average of the national average price of the agricultural commodity covered by the application described in subsection (a) of this section for the 5 marketing years preceding the most recent marketing year, and

(ii) the national average price of the agricultural commodity for the most recent marketing year, and

(B) the amount of the agricultural commodity produced by the agricultural commodity producer in the most recent marketing year.

[1] So in original. Probably should be ''an''.

[2] So in original. Probably should be a reference to clause (i).

(2) Special rule for subsequent qualified years

The amount of cash benefits for a qualified year shall be determined in the same manner as cash benefits are determined under paragraph (1), except that the average national price of the agricultural commodity shall be determined under paragraph (1)(A)(i) by using the 5-marketing-year period used to determine the amount of cash benefits for the first certification.

(c) Maximum amount of cash assistance

The maximum amount of cash benefits an agricultural commodity producer may receive in any 12-month period shall not exceed $10,000.

(d) Limitations on other assistance

An agricultural commodity producer entitled to receive a cash benefit under this part—

(1) shall not be eligible for any other cash benefit under this subchapter, and

(2) shall be entitled to employment services and training benefits under division II of subpart B of part 2 of this subchapter.

(Pub. L. 93–618, title II, § 296, as added Pub. L. 107–210, div. A, title I, § 141(a), Aug. 6, 2002, 116 Stat. 949; amended Pub. L. 108–429, title II, § 2004(a)(9), Dec. 3, 2004, 118 Stat. 2590.)

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–429, § 2004(a)(9)(A)(i), substituted ''adjustment assistance under this part'' for ''trade adjustment allowance'' and ''such assistance'' for ''such allowance'' in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 108–429, § 2004(a)(9)(A)(ii), made technical amendment to reference in original act which appears in text as reference to this subsection.

Subsec. (b)(2). Pub. L. 108–429, § 2004(a)(9)(B), substituted ''paragraph (1), except'' for ''paragraph (1) except''.

TERMINATION DATE

No adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2401f. Fraud and recovery of overpayments

(a) In general

(1) Repayment

If the Secretary, or a court of competent jurisdiction, determines that any person has received any payment under this part to which the person was not entitled, such person shall be liable to repay such amount to the Secretary, except that the Secretary may waive such repayment if the Secretary determines, in accordance with guidelines prescribed by the Secretary, that—

(A) the payment was made without fault on the part of such person; and

(B) requiring such repayment would be contrary to equity and good conscience.

(2) Recovery of overpayment

Unless an overpayment is otherwise recovered, or waived under paragraph (1), the Secretary shall recover the overpayment by deductions from any sums payable to such person under this part.

(b) False statement

A person shall, in addition to any other penalty provided by law, be ineligible for any further payments under this part—

(1) if the Secretary, or a court of competent jurisdiction, determines that the person—

(A) knowingly has made, or caused another to make, a false statement or representation of a material fact; or

(B) knowingly has failed, or caused another to fail, to disclose a material fact; and

(2) as a result of such false statement or representation, or of such nondisclosure, such person has received any payment under this part to which the person was not entitled.

(c) Notice and determination

Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination under subsection (a)(1) of this section by the Secretary has been made, notice of the determination and an opportunity for a fair hearing thereon has been given to the person concerned, and the determination has become final.

(d) Payment to Treasury

Any amount recovered under this section shall be returned to the Treasury of the United States.

(e) Penalties

Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other person any payment authorized to be furnished under this part shall be fined not more than $10,000 or imprisoned for not more than 1 year, or both.

(Pub. L. 93–618, title II, § 297, as added Pub. L. 107–210, div. A, title I, § 141(a), Aug. 6, 2002, 116 Stat. 952.)

TERMINATION DATE

No adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

§ 2401g. Authorization of appropriations

(a) In general

There are authorized to be appropriated and there are appropriated to the Department of Agriculture not to exceed $90,000,000 for each of the fiscal years 2003 through 2007 to carry out the purposes of this part, and there are authorized to be appropriated and there are appropriated to the Department of Agriculture to carry out this part $9,000,000 for the 3-month period beginning on October 1, 2007.

(b) Proportionate reduction

If in any year the amount appropriated under this part is insufficient to meet the requirements for adjustment assistance payable under this part, the amount of assistance payable under this part shall be reduced proportionately.

(Pub. L. 93–618, title II, § 298, as added Pub. L. 107–210, div. A, title I, § 141(a), Aug. 6, 2002, 116

Stat. 952; amended Pub. L. 110–89, §1(c), Sept. 28, 2007, 121 Stat. 982.)

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–89 inserted before period at end ‘‘, and there are authorized to be appropriated and there are appropriated to the Department of Agriculture to carry out this part $9,000,000 for the 3-month period beginning on October 1, 2007’’.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–89 effective Oct. 1, 2007, see section 1(e) of Pub. L. 110–89, set out as a note under section 2317 of this title.

TERMINATION DATE

No adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this part after Dec. 31, 2007, except as otherwise provided, see section 285 of Pub. L. 93–618, as amended, set out as a note preceding section 2271 of this title.

SUBCHAPTER III—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES

§ 2411. Actions by United States Trade Representative

(a) Mandatory action

(1) If the United States Trade Representative determines under section 2414(a)(1) of this title that—

(A) the rights of the United States under any trade agreement are being denied; or

(B) an act, policy, or practice of a foreign country—

(i) violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

(ii) is unjustifiable and burdens or restricts United States commerce;

the Trade Representative shall take action authorized in subsection (c) of this section, subject to the specific direction, if any, of the President regarding any such action, and shall take all other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to enforce such rights or to obtain the elimination of such act, policy, or practice. Actions may be taken that are within the power of the President with respect to trade in any goods or services, or with respect to any other area of pertinent relations with the foreign country.

(2) The Trade Representative is not required to take action under paragraph (1) in any case in which—

(A) the Dispute Settlement Body (as defined in section 3531(5) of this title) has adopted a report, or a ruling issued under the formal dispute settlement proceeding provided under any other trade agreement finds, that—

(i) the rights of the United States under a trade agreement are not being denied, or

(ii) the act, policy, or practice—

(I) is not a violation of, or inconsistent with, the rights of the United States, or

(II) does not deny, nullify, or impair benefits to the United States under any trade agreement; or

(B) the Trade Representative finds that—

(i) the foreign country is taking satisfactory measures to grant the rights of the United States under a trade agreement,

(ii) the foreign country has—

(I) agreed to eliminate or phase out the act, policy, or practice, or

(II) agreed to an imminent solution to the burden or restriction on United States commerce that is satisfactory to the Trade Representative,

(iii) it is impossible for the foreign country to achieve the results described in clause (i) or (ii), as appropriate, but the foreign country agrees to provide to the United States compensatory trade benefits that are satisfactory to the Trade Representative,

(iv) in extraordinary cases, where the taking of action under this subsection would have an adverse impact on the United States economy substantially out of proportion to the benefits of such action, taking into account the impact of not taking such action on the credibility of the provisions of this subchapter, or

(v) the taking of action under this subsection would cause serious harm to the national security of the United States.

(3) Any action taken under paragraph (1) to eliminate an act, policy, or practice shall be devised so as to affect goods or services of the foreign country in an amount that is equivalent in value to the burden or restriction being imposed by that country on United States commerce.

(b) Discretionary action

If the Trade Representative determines under section 2414(a)(1) of this title that—

(1) an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, and

(2) action by the United States is appropriate, the Trade Representative shall take all appropriate and feasible action authorized under subsection (c) of this section, subject to the specific direction, if any, of the President regarding any such action, and all other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to obtain the elimination of that act, policy, or practice. Actions may be taken that are within the power of the President with respect to trade in any goods or services, or with respect to any other area of pertinent relations with the foreign country.

(c) Scope of authority

(1) For purposes of carrying out the provisions of subsection (a) or (b) of this section, the Trade Representative is authorized to—

(A) suspend, withdraw, or prevent the application of, benefits of trade agreement concessions to carry out a trade agreement with the foreign country referred to in such subsection;

(B) impose duties or other import restrictions on the goods of, and, notwithstanding any other provision of law, fees or restrictions on the services of, such foreign country for such time as the Trade Representative determines appropriate;

(C) in a case in which the act, policy, or practice also fails to meet the eligibility criteria for receiving duty-free treatment under subsections (b) and (c) of section 2462 of this title, subsections (b) and (c) of section 2702 of this title, or subsections (c) and (d) of section 3202 of this title, withdraw, limit, or suspend such treatment under such provisions, notwithstanding the provisions of subsection (a)(3) of this section; or

(D) enter into binding agreements with such foreign country that commit such foreign country to—

(i) eliminate, or phase out, the act, policy, or practice that is the subject of the action to be taken under subsection (a) or (b) of this section,

(ii) eliminate any burden or restriction on United States commerce resulting from such act, policy, or practice, or

(iii) provide the United States with compensatory trade benefits that—

(I) are satisfactory to the Trade Representative, and

(II) meet the requirements of paragraph (4).

(2)(A) Notwithstanding any other provision of law governing any service sector access authorization, and in addition to the authority conferred in paragraph (1), the Trade Representative may, for purposes of carrying out the provisions of subsection (a) or (b) of this section—

(i) restrict, in the manner and to the extent the Trade Representative determines appropriate, the terms and conditions of any such authorization, or

(ii) deny the issuance of any such authorization.

(B) Actions described in subparagraph (A) may only be taken under this section with respect to service sector access authorizations granted, or applications therefor pending, on or after the date on which—

(i) a petition is filed under section 2412(a) of this title, or

(ii) a determination to initiate an investigation is made by the Trade Representative under section 2412(b) of this title.

(C) Before the Trade Representative takes any action under this section involving the imposition of fees or other restrictions on the services of a foreign country, the Trade Representative shall, if the services involved are subject to regulation by any agency of the Federal Government or of any State, consult, as appropriate, with the head of the agency concerned.

(3) The actions the Trade Representative is authorized to take under subsection (a) or (b) of this section may be taken against any goods or economic sector—

(A) on a nondiscriminatory basis or solely against the foreign country described in such subsection, and

(B) without regard to whether or not such goods or economic sector were involved in the act, policy, or practice that is the subject of such action.

(4) Any trade agreement described in paragraph (1)(D)(iii) shall provide compensatory trade benefits that benefit the economic sector which includes the domestic industry that would benefit from the elimination of the act, policy, or practice that is the subject of the action to be taken under subsection (a) or (b) of this section, or benefit the economic sector as closely related as possible to such economic sector, unless—

(A) the provision of such trade benefits is not feasible, or

(B) trade benefits that benefit any other economic sector would be more satisfactory than such trade benefits.

(5) If the Trade Representative determines that actions to be taken under subsection (a) or (b) of this section are to be in the form of import restrictions, the Trade Representative shall—

(A) give preference to the imposition of duties over the imposition of other import restrictions, and

(B) if an import restriction other than a duty is imposed, consider substituting, on an incremental basis, an equivalent duty for such other import restriction.

(6) Any action taken by the Trade Representative under this section with respect to export targeting shall, to the extent possible, reflect the full benefit level of the export targeting to the beneficiary over the period during which the action taken has an effect.

(d) Definitions and special rules

For purposes of this subchapter—

(1) The term ''commerce'' includes, but is not limited to—

(A) services (including transfers of information) associated with international trade, whether or not such services are related to specific goods, and

(B) foreign direct investment by United States persons with implications for trade in goods or services.

(2) An act, policy, or practice of a foreign country that burdens or restricts United States commerce may include the provision, directly or indirectly, by that foreign country of subsidies for the construction of vessels used in the commercial transportation by water of goods between foreign countries and the United States.

(3)(A) An act, policy, or practice is unreasonable if the act, policy, or practice, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable.

(B) Acts, policies, and practices that are unreasonable include, but are not limited to, any act, policy, or practice, or any combination of acts, policies, or practices, which—

(i) denies fair and equitable—

(I) opportunities for the establishment of an enterprise,

(II) provision of adequate and effective protection of intellectual property rights notwithstanding the fact that the foreign country may be in compliance with the specific obligations of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 3511(d)(15) of this title,

(III) nondiscriminatory market access opportunities for United States persons that rely upon intellectual property protection, or

(IV) market opportunities, including the toleration by a foreign government of systematic anticompetitive activities by enterprises or among enterprises in the foreign country that have the effect of restricting, on a basis that is inconsistent with commercial considerations, access of United States goods or services to a foreign market,

(ii) constitutes export targeting, or

(iii) constitutes a persistent pattern of conduct that—

(I) denies workers the right of association,

(II) denies workers the right to organize and bargain collectively,

(III) permits any form of forced or compulsory labor,

(IV) fails to provide a minimum age for the employment of children, or

(V) fails to provide standards for minimum wages, hours of work, and occupational safety and health of workers.

(C)(i) Acts, policies, and practices of a foreign country described in subparagraph (B)(iii) shall not be treated as being unreasonable if the Trade Representative determines that—

(I) the foreign country has taken, or is taking, actions that demonstrate a significant and tangible overall advancement in providing throughout the foreign country (including any designated zone within the foreign country) the rights and other standards described in the subclauses of subparagraph (B)(iii), or

(II) such acts, policies, and practices are not inconsistent with the level of economic development of the foreign country.

(ii) The Trade Representative shall publish in the Federal Register any determination made under clause (i), together with a description of the facts on which such determination is based.

(D) For purposes of determining whether any act, policy, or practice is unreasonable, reciprocal opportunities in the United States for foreign nationals and firms shall be taken into account, to the extent appropriate.

(E) The term ''export targeting'' means any government plan or scheme consisting of a combination of coordinated actions (whether carried out severally or jointly) that are bestowed on a specific enterprise, industry, or group thereof, the effect of which is to assist the enterprise, industry, or group to become more competitive in the export of a class or kind of merchandise.

(F)(i) For the purposes of subparagraph (B)(i)(II), adequate and effective protection of intellectual property rights includes adequate and effective means under the laws of the foreign country for persons who are not citizens or nationals of such country to secure, exercise, and enforce rights and enjoy commercial benefits relating to patents, trademarks, copyrights and related rights, mask works, trade secrets, and plant breeder's rights.

(ii) For purposes of subparagraph (B)(i)(IV), the denial of fair and equitable nondiscriminatory market access opportunities includes restrictions on market access related to the use, exploitation, or enjoyment of commercial benefits derived from exercising intellectual property rights in protected works or fixations or products embodying protected works.

(4)(A) An act, policy, or practice is unjustifiable if the act, policy, or practice is in violation of, or inconsistent with, the international legal rights of the United States.

(B) Acts, policies, and practices that are unjustifiable include, but are not limited to, any act, policy, or practice described in subparagraph (A) which denies national or most-favored-nation treatment or the right of establishment or protection of intellectual property rights.

(5) Acts, policies, and practices that are discriminatory include, when appropriate, any act, policy, and practice which denies national or most-favored-nation treatment to United States goods, services, or investment.

(6) The term ''service sector access authorization'' means any license, permit, order, or other authorization, issued under the authority of Federal law, that permits a foreign supplier of services access to the United States market in a service sector concerned.

(7) The term ''foreign country'' includes any foreign instrumentality. Any possession or territory of a foreign country that is administered separately for customs purposes shall be treated as a separate foreign country.

(8) The term ''Trade Representative'' means the United States Trade Representative.

(9) The term ''interested persons'', only for purposes of sections 2412(a)(4)(B), 2414(b)(1)(A), 2416(c)(2), and 2417(a)(2) of this title, includes, but is not limited to, domestic firms and workers, representatives of consumer interests, United States product exporters, and any industrial user of any goods or services that may be affected by actions taken under subsection (a) or (b) of this section.

(Pub. L. 93–618, title III, §301, as added Pub. L. 96–39, title IX, §901, July 26, 1979, 93 Stat. 295; amended Pub. L. 98–573, title III, §304(a)–(c), (f), Oct. 30, 1984, 98 Stat. 3002, 3005; Pub. L. 100–418, title I, §1301(a), Aug. 23, 1988, 102 Stat. 1164; Pub. L. 103–465, title III, §314(a)–(c), title VI, §621(a)(9), Dec. 8, 1994, 108 Stat. 4939, 4940, 4993; Pub. L. 104–295, §20(c)(4), Oct. 11, 1996, 110 Stat. 3528.)

PRIOR PROVISIONS

A prior section 301 of Pub. L. 93–618, title III, Jan. 3, 1975, 88 Stat. 2041, which related to Presidential responses to foreign import restrictions and export subsidies and which was classified to this section, was omitted in the general revision of chapter 1 of title III of Pub. L. 93–618 by Pub. L. 96–39, title IX, §901, July 26, 1979, 93 Stat. 295.

AMENDMENTS

1996—Subsec. (c)(4). Pub. L. 104–295 substituted ''paragraph (1)(D)(iii)'' for ''paragraph (1)(C)(iii)''.

1994—Subsec. (a)(1). Pub. L. 103–465, §314(a)(1), inserted at end of concluding provisions ''Actions may be taken that are within the power of the President with respect to trade in any goods or services, or with re-

spect to any other area of pertinent relations with the foreign country.''

Subsec. (a)(2)(A). Pub. L. 103–465, §621(a)(9), substituted ''the Dispute Settlement Body (as defined in section 3531(5) of this title) has adopted a report,'' for ''the Contracting Parties to the General Agreement on Tariffs and Trade have determined, a panel of experts has reported to the Contracting Parties,''.

Subsec. (b)(2). Pub. L. 103–465, §314(a)(1), inserted at end ''Actions may be taken that are within the power of the President with respect to trade in any goods or services, or with respect to any other area of pertinent relations with the foreign country.''

Subsec. (c)(1)(B) to (D). Pub. L. 103–465, §314(b)(1), struck out ''or'' at end of subpar. (B), added subpar. (C), and redesignated former subpar. (C) as (D).

Subsec. (c)(5). Pub. L. 103–465, §314(a)(2), added introductory provisions, reenacted subpar. (A) without change, and struck out former introductory provisions which read as follows: ''In taking actions under subsection (a) or (b) of this section, the Trade Representative shall—''.

Subsec. (d)(3)(B)(i)(II) to (IV). Pub. L. 103–465, §314(c)(1), added subcls. (II) to (IV) and struck out former subcls. (II) and (III) which read as follows:

''(II) provision of adequate and effective protection of intellectual property rights, or

''(III) market opportunities, including the toleration by a foreign government of systematic anticompetitive activities by private firms or among private firms in the foreign country that have the effect of restricting, on a basis that is inconsistent with commercial considerations, access of United States goods to purchasing by such firms,''.

Subsec. (d)(3)(F). Pub. L. 103–465, §314(c)(2), added subpar. (F).

1988—Pub. L. 100–418 amended section generally, substituting provisions relating to actions by United States Trade Representative for provisions relating to determinations and action by President.

1984—Subsec. (a). Pub. L. 98–573, §304(a), amended subsec. (a) generally, which prior to amendment provided that if the President determines that action by the United States is appropriate (1) to enforce the rights of the United States under any trade agreement; or (2) to respond to any act, policy, or practice of a foreign country or instrumentality that (A) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or (B) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce; the President shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice and that action under this section may be taken on a nondiscriminatory basis or solely against the products or services of the foreign country or instrumentality involved.

Subsec. (b)(1). Pub. L. 98–573, §304(b)(1), struck out ''and'' at end.

Subsec. (b)(2). Pub. L. 98–573, §304(b)(2), (3), inserted '', notwithstanding any other provision of law,'' and substituted ''goods'' for ''products''.

Subsecs. (c), (d). Pub. L. 98–573, §304(c), added subsec. (c) and redesignated existing subsecs. (c) and (d) as (d) and (e), respectively.

Subsec. (e). Pub. L. 98–573, §304(c), (f), redesignated subsec. (d) as (e), inserted ''For purposes of this section—'' before par. (1), in par. (1) substituted provisions defining ''commerce'' as including, but not limited to services (including transfers of information) associated with international trade, whether or not such services are related to specific goods, and foreign direct investment by United States persons with implications for trade in goods or services for provision defining ''commerce'' as including, but not limited to, services associated with international trade, whether or not such services are related to specific products, and added pars. (3) to (6).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 314(a)–(c) of Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 316(a) of Pub. L. 103–465, set out as an Effective Date note under section 3581 of this title.

Amendment by section 621(a)(9) of Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 621(b) of Pub. L. 103–465, set out as a note under section 1677k of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1301(c) of Pub. L. 100–418 provided that: ''The amendments made by this section [enacting sections 2417 to 2419 of this title and amending this section and sections 2412 to 2416 of this title] shall apply to—

''(1) petitions filed, and investigations initiated, under section 302 of the Trade Act of 1974 [19 U.S.C. 2412] on or after the date of the enactment of this Act [Aug. 23, 1988]; and

''(2) petitions filed, and investigations initiated, before the date of enactment of this Act, if by that date no decision had been made under section 304 [19 U.S.C. 2414] regarding the petition or investigation.''

EFFECTIVE DATE

Section 903 of Pub. L. 96–39 provided that: ''The amendments made by sections 901 and 902 [enacting this subchapter and amending sections 1872, 2192, and 2194 of this title] shall take effect on the date of the enactment of this Act [July 26, 1979]. Any petition for review filed with the Special Representative for Trade Negotiations under section 301 of the Trade Act of 1974 (as in effect on the day before such date of enactment) [former section 2411 of this title] and pending on such date of enactment shall be treated as an investigation initiated on such date of enactment under section 302(b)(2) of the Trade Act of 1974 (as added by section 901 of this Act) [section 2412(b)(2) of this title] and any information developed by, or submitted to, the Special Representative before such date of enactment under the review shall be treated as part of the information developed during such investigation.''

EX. ORD. NO. 13155. ACCESS TO HIV/AIDS PHARMACEUTICALS AND MEDICAL TECHNOLOGIES

Ex. Ord. No. 13155, May 10, 2000, 65 F.R. 30521, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 141 and chapter 1 of title III of the Trade Act of 1974, as amended (19 U.S.C. 2171, 2411–2420), section 307 of the Public Health Service Act (42 U.S.C. 242*l*), and section 104 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151b), and in accordance with executive branch policy on health-related intellectual property matters to promote access to essential medicines, it is hereby ordered as follows:

SECTION 1. *Policy*. (a) In administering sections 301–310 of the Trade Act of 1974 [19 U.S.C. 2411–2420], the United States shall not seek, through negotiation or otherwise, the revocation or revision of any intellectual property law or policy of a beneficiary sub-Saharan African country, as determined by the President, that regulates HIV/AIDS pharmaceuticals or medical technologies if the law or policy of the country:

(1) promotes access to HIV/AIDS pharmaceuticals or medical technologies for affected populations in that country; and

(2) provides adequate and effective intellectual property protection consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) referred to in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)).

(b) The United States shall encourage all beneficiary sub-Saharan African countries to implement policies designed to address the underlying causes of the HIV/AIDS crisis by, among other things, making efforts to encourage practices that will prevent further transmission and infection and to stimulate development of

the infrastructure necessary to deliver adequate health services, and by encouraging policies that provide an incentive for public and private research on, and development of, vaccines and other medical innovations that will combat the HIV/AIDS epidemic in Africa.

SEC. 2. *Rationale*: (a) This order finds that:

(1) since the onset of the worldwide HIV/AIDS epidemic, approximately 34 million people living in sub-Saharan Africa have been infected with the disease;

(2) of those infected, approximately 11.5 million have died;

(3) the deaths represent 83 percent of the total HIV/AIDS-related deaths worldwide; and

(4) access to effective therapeutics for HIV/AIDS is determined by issues of price, health system infrastructure for delivery, and sustainable financing.

(b) In light of these findings, this order recognizes that:

(1) it is in the interest of the United States to take all reasonable steps to prevent further spread of infectious disease, particularly HIV/AIDS;

(2) there is critical need for effective incentives to develop new pharmaceuticals, vaccines, and therapies to combat the HIV/AIDS crisis, including effective global intellectual property standards designed to foster pharmaceutical and medical innovation;

(3) the overriding priority for responding to the crisis of HIV/AIDS in sub-Saharan Africa should be to improve public education and to encourage practices that will prevent further transmission and infection, and to stimulate development of the infrastructure necessary to deliver adequate health care services;

(4) the United States should work with individual countries in sub-Saharan Africa to assist them in development of effective public education campaigns aimed at the prevention of HIV/AIDS transmission and infection, and to improve their health care infrastructure to promote improved access to quality health care for their citizens in general, and particularly with respect to the HIV/AIDS epidemic;

(5) an effective United States response to the crisis in sub-Saharan Africa must focus in the short term on preventive programs designed to reduce the frequency of new infections and remove the stigma of the disease, and should place a priority on basic health services that can be used to treat opportunistic infections, sexually transmitted infections, and complications associated with HIV/AIDS so as to prolong the duration and improve the quality of life of those with the disease;

(6) an effective United States response to the crisis must also focus on the development of HIV/AIDS vaccines to prevent the spread of the disease;

(7) the innovative capacity of the United States in the commercial and public pharmaceutical research sectors is unmatched in the world, and the participation of both these sectors will be a critical element in any successful program to respond to the HIV/AIDS crisis in sub-Saharan Africa;

(8) the TRIPS Agreement recognizes the importance of promoting effective and adequate protection of intellectual property rights and the right of countries to adopt measures necessary to protect public health;

(9) individual countries should have the ability to take measures to address the HIV/AIDS epidemic, provided that such measures are consistent with their international obligations; and

(10) successful initiatives will require effective partnerships and cooperation among governments, international organizations, nongovernmental organizations, and the private sector, and greater consideration should be given to financial, legal, and other incentives that will promote improved prevention and treatment actions.

SEC. 3. *Scope*. (a) This order prohibits the United States Government from taking action pursuant to section 301(b) of the Trade Act of 1974 [19 U.S.C. 2411(b)] with respect to any law or policy in beneficiary sub-Saharan African countries that promotes access to HIV/AIDS pharmaceuticals or medical technologies and that provides adequate and effective intellectual property protection consistent with the TRIPS Agreement. However, this order does not prohibit United States Government officials from evaluating, determining, or expressing concern about whether such a law or policy promotes access to HIV/AIDS pharmaceuticals or medical technologies or provides adequate and effective intellectual property protection consistent with the TRIPS Agreement. In addition, this order does not prohibit United States Government officials from consulting with or otherwise discussing with sub-Saharan African governments whether such law or policy meets the conditions set forth in section 1(a) of this order. Moreover, this order does not prohibit the United States Government from invoking the dispute settlement procedures of the World Trade Organization to examine whether any such law or policy is consistent with the Uruguay Round Agreements, referred to in section 101(d) of the Uruguay Round Agreements Act [19 U.S.C. 3511(d)].

(b) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not create, any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON.

§ 2412. Initiation of investigations

(a) Petitions

(1) Any interested person may file a petition with the Trade Representative requesting that action be taken under section 2411 of this title and setting forth the allegations in support of the request.

(2) The Trade Representative shall review the allegations in any petition filed under paragraph (1) and, not later than 45 days after the date on which the Trade Representative received the petition, shall determine whether to initiate an investigation.

(3) If the Trade Representative determines not to initiate an investigation with respect to a petition, the Trade Representative shall inform the petitioner of the reasons therefor and shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.

(4) If the Trade Representative makes an affirmative determination under paragraph (2) with respect to a petition, the Trade Representative shall initiate an investigation regarding the issues raised in the petition. The Trade Representative shall publish a summary of the petition in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views concerning the issues, including a public hearing—

(A) within the 30-day period beginning on the date of the affirmative determination (or on a date after such period if agreed to by the petitioner) if a public hearing within such period is requested in the petition, or

(B) at such other time if a timely request therefor is made by the petitioner or by any interested person.

(b) Initiation of investigation by means other than petition

(1)(A) If the Trade Representative determines that an investigation should be initiated under this subchapter with respect to any matter in order to determine whether the matter is ac-

tionable under section 2411 of this title, the Trade Representative shall publish such determination in the Federal Register and shall initiate such investigation.

(B) The Trade Representative shall, before making any determination under subparagraph (A), consult with appropriate committees established pursuant to section 2155 of this title.

(2)(A) By no later than the date that is 30 days after the date on which a country is identified under section 2242(a)(2) of this title, the Trade Representative shall initiate an investigation under this subchapter with respect to any act, policy, or practice of that country that—

(i) was the basis for such identification, and

(ii) is not at that time the subject of any other investigation or action under this subchapter.

(B) The Trade Representative is not required under subparagraph (A) to initiate an investigation under this subchapter with respect to any act, policy, or practice of a foreign country if the Trade Representative determines that the initiation of the investigation would be detrimental to United States economic interests.

(C) If the Trade Representative makes a determination under subparagraph (B) not to initiate an investigation, the Trade Representative shall submit to the Congress a written report setting forth, in detail—

(i) the reasons for the determination, and

(ii) the United States economic interests that would be adversely affected by the investigation.

(D) The Trade Representative shall, from time to time, consult with the Register of Copyrights, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and other appropriate officers of the Federal Government, during any investigation initiated under this subchapter by reason of subparagraph (A).

(c) Discretion

In determining whether to initiate an investigation under subsection (a) or (b) of this section of any act, policy, or practice that is enumerated in any provision of section 2411(d) of this title, the Trade Representative shall have discretion to determine whether action under section 2411 of this title would be effective in addressing such act, policy, or practice.

(Pub. L. 93–618, title III, § 302, as added Pub. L. 96–39, title IX, § 901, July 26, 1979, 93 Stat. 296; amended Pub. L. 98–573, title III, § 304(d)(1), Oct. 30, 1984, 98 Stat. 3003; Pub. L. 100–418, title I, § 1301(a), Aug. 23, 1988, 102 Stat. 1168; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4732(b)(9)], Nov. 29, 1999, 113 Stat. 1536, 1501A–584.)

PRIOR PROVISIONS

A prior section 302 of Pub. L. 93–618, title III, Jan. 3, 1975, 88 Stat. 2043, which related to the procedure for Congressional disapproval of certain actions taken by the President to eliminate foreign import restrictions and export subsidies and which was classified to this section, was omitted in the general revision of chapter 1 of title III of Pub. L. 93–618 by Pub. L. 96–39, title IX, § 901, July 26, 1979, 93 Stat. 295.

AMENDMENTS

1999—Subsec. (b)(2)(D). Pub. L. 106–113 substituted ''Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office'' for ''Commissioner of Patents and Trademarks''.

1988—Pub. L. 100–418 amended section generally, substituting provisions relating to initiating investigations with or without petitions and discretion of Trade Representative for provisions relating to filing and determinations on petitions for investigations and investigations initiated by Trade Representative.

1984—Pub. L. 98–573 amended section generally, substituting ''United States Trade Representative'' and ''Trade Representative'' for ''Special Representative for Trade Negotiations'' and ''Special Representative'', respectively, substituting ''the reasons'' for ''his reasons'' in subsec. (b)(1), substituting ''a summary'' for ''the text'' in subsec. (b)(2), striking out the comma after ''petitioner)'' in subsec. (b)(2)(A), and inserting ''or by any interested person'' after ''petitioner'' in subsec. (b)(2)(B).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable to petitions filed, and investigations initiated, under this section on or after Aug. 23, 1988, and petitions filed, and investigations initiated, before Aug. 23, 1988, if by such date no decision had been made under section 2414 of this title regarding the petition or investigation, see section 1301(c) of Pub. L. 100–418, set out as a note under section 2411 of this title.

§ 2413. Consultation upon initiation of investigation

(a) In general

(1) On the date on which an investigation is initiated under section 2412 of this title, the Trade Representative, on behalf of the United States, shall request consultations with the foreign country concerned regarding the issues involved in such investigation.

(2) If the investigation initiated under section 2412 of this title involves a trade agreement and a mutually acceptable resolution is not reached before the earlier of—

(A) the close of the consultation period, if any, specified in the trade agreement, or

(B) the 150th day after the day on which consultation was commenced,

the Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under such agreement.

(3) The Trade Representative shall seek information and advice from the petitioner (if any) and the appropriate committees established pursuant to section 2155 of this title in preparing United States presentations for consultations and dispute settlement proceedings.

(b) Delay of request for consultations

(1) Notwithstanding the provisions of subsection (a) of this section—

(A) the United States Trade Representative may, after consulting with the petitioner (if any), delay for up to 90 days any request for consultations under subsection (a) of this section for the purpose of verifying or improving the petition to ensure an adequate basis for consultation, and

(B) if such consultations are delayed by reason of subparagraph (A), each time limitation under section 2414 of this title shall be extended for the period of such delay.

(2) The Trade Representative shall—

(A) publish notice of any delay under paragraph (1) in the Federal Register, and

(B) report to Congress on the reasons for such delay in the report required under section 2419(a)(3) of this title.

(Pub. L. 93–618, title III, § 303, as added Pub. L. 96–39, title IX, § 901, July 26, 1979, 93 Stat. 297; amended Pub. L. 98–573, title III, §§ 304(d)(2)(B), (e), 306(c)(2)(C)(ii), Oct. 30, 1984, 98 Stat. 3004, 3005, 3012; Pub. L. 100–418, title I, § 1301(a), Aug. 23, 1988, 102 Stat. 1170.)

AMENDMENTS

1988—Pub. L. 100–418 amended section generally, revising and restating substantially similar provisions.

1984—Subsec. (a). Pub. L. 98–573, §§ 304(d)(2)(B), (e)(1), 306(c)(2)(C)(ii), designated existing provisions as subsec. (a), struck out ''with respect to a petition'' after ''section 2412(b) of this title'', inserted ''or the determination of the Trade Representative under section 2412(c)(1) of this title'' after ''in the petition'', and ''(if any)'' after ''petitioner'', and struck out ''private sector'' after ''appropriate''.

Subsec. (b). Pub. L. 98–573, § 304(e)(2), added subsec. (b).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable to petitions filed, and investigations initiated, under section 2412 of this title on or after Aug. 23, 1988, and petitions filed, and investigations initiated, before Aug. 23, 1988, if by such date no decision had been made under section 2414 of this title regarding the petition or investigation, see section 1301(c) of Pub. L. 100–418, set out as a note under section 2411 of this title.

§ 2414. Determinations by Trade Representative

(a) In general

(1) On the basis of the investigation initiated under section 2412 of this title and the consultations (and the proceedings, if applicable) under section 2413 of this title, the Trade Representative shall—

(A) determine whether—

(i) the rights to which the United States is entitled under any trade agreement are being denied, or

(ii) any act, policy, or practice described in subsection (a)(1)(B) or (b)(1) of section 2411 of this title exists, and

(B) if the determination made under subparagraph (A) is affirmative, determine what action, if any, the Trade Representative should take under subsection (a) or (b) of section 2411 of this title.

(2) The Trade Representative shall make the determinations required under paragraph (1) on or before—

(A) in the case of an investigation involving a trade agreement, except an investigation initiated pursuant to section 2412(b)(2)(A) of this title involving rights under the Agreement on Trade-Related Aspects of Intellectual Property Rights (referred to in section 3511(d)(15) of this title) or the GATT 1994 (as defined in section 3501(1)(B) of this title) relating to products subject to intellectual property protection, the earlier of—

(i) the date that is 30 days after the date on which the dispute settlement procedure is concluded, or

(ii) the date that is 18 months after the date on which the investigation is initiated, or

(B) in all cases not described in subparagraph (A) or paragraph (3), the date that is 12 months after the date on which the investigation is initiated.

(3)(A) If an investigation is initiated under this subchapter by reason of section 2412(b)(2) of this title and—

(i) the Trade Representative considers that rights under the Agreement on Trade-Related Aspects of Intellectual Property Rights or the GATT 1994 relating to products subject to intellectual property protection are involved, the Trade Representative shall make the determination required under paragraph (1) not later than 30 days after the date on which the dispute settlement procedure is concluded; or

(ii) the Trade Representative does not consider that a trade agreement, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, is involved or does not make a determination described in subparagraph (B) with respect to such investigation, the Trade Representative shall make the determinations required under paragraph (1) with respect to such investigation not later than the date that is 6 months after the date on which such investigation is initiated.

(B) If the Trade Representative determines with respect to an investigation initiated by reason of section 2412(b)(2) of this title (other than an investigation involving a trade agreement) that—

(i) complex or complicated issues are involved in the investigation that require additional time,

(ii) the foreign country involved in the investigation is making substantial progress in drafting or implementing legislative or administrative measures that will provide adequate and effective protection of intellectual property rights, or

(iii) such foreign country is undertaking enforcement measures to provide adequate and effective protection of intellectual property rights,

the Trade Representative shall publish in the Federal Register notice of such determination and shall make the determinations required under paragraph (1) with respect to such investigation by no later than the date that is 9 months after the date on which such investigation is initiated.

(4) In any case in which a dispute is not resolved before the close of the minimum dispute settlement period provided for in a trade agreement, the Trade Representative, within 15 days after the close of such dispute settlement period, shall submit a report to Congress setting forth the reasons why the dispute was not resolved within the minimum dispute settlement period, the status of the case at the close of the

period, and the prospects for resolution. For purposes of this paragraph, the minimum dispute settlement period provided for under any such trade agreement is the total period of time that results if all stages of the formal dispute settlement procedures are carried out within the time limitations specified in the agreement, but computed without regard to any extension authorized under the agreement at any stage.

(b) Consultation before determinations

(1) Before making the determinations required under subsection (a)(1) of this section, the Trade Representative, unless expeditious action is required—

(A) shall provide an opportunity (after giving not less than 30 days notice thereof) for the presentation of views by interested persons, including a public hearing if requested by any interested person,

(B) shall obtain advice from the appropriate committees established pursuant to section 2155 of this title, and

(C) may request the views of the United States International Trade Commission regarding the probable impact on the economy of the United States of the taking of action with respect to any goods or service.

(2) If the Trade Representative does not comply with the requirements of subparagraphs (A) and (B) of paragraph (1) because expeditious action is required, the Trade Representative shall, after making the determinations under subsection (a)(1) of this section, comply with such subparagraphs.

(c) Publication

The Trade Representative shall publish in the Federal Register any determination made under subsection (a)(1) of this section, together with a description of the facts on which such determination is based.

(Pub. L. 93–618, title III, § 304, as added Pub. L. 96–39, title IX, § 901, July 26, 1979, 93 Stat. 297; amended Pub. L. 98–573, title III, §§ 304(d)(2)(C), 306(c)(2)(C)(ii), Oct. 30, 1984, 98 Stat. 3005, 3012; Pub. L. 100–418, title I, § 1301(a), Aug. 23, 1988, 102 Stat. 1170; Pub. L. 103–465, title III, § 314(d), Dec. 8, 1994, 108 Stat. 4940; Pub. L. 104–295, § 20(c)(6), Oct. 11, 1996, 110 Stat. 3528; Pub. L. 108–429, title II, § 2201(a), (b), Dec. 3, 2004, 118 Stat. 2598, 2599.)

AMENDMENTS

2004—Subsec. (a)(2)(A). Pub. L. 108–429, § 2201(a), in introductory provisions, inserted ''except an investigation initiated pursuant to section 2412(b)(2)(A) of this title involving rights under the Agreement on Trade-Related Aspects of Intellectual Property Rights (referred to in section 3511(d)(15) of this title) or the GATT 1994 (as defined in section 3501(1)(B) of this title) relating to products subject to intellectual property protection,'' after ''agreement,''.

Subsec. (a)(3)(A). Pub. L. 108–429, § 2201(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''If an investigation is initiated under this subchapter by reason of section 2412(b)(2) of this title and the Trade Representative does not consider that a trade agreement, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (referred to in section 3511(d)(15) of this title), is involved or does not make a determination described in subparagraph (B) with respect to such investigation, the Trade Representative shall make the determinations required under paragraph (1) with respect to such investigation by no later than the date that is 6 months after the date on which such investigation is initiated.''

1996—Subsec. (a)(3)(A). Pub. L. 104–295 inserted ''Rights'' after ''Intellectual Property''.

1994—Subsec. (a)(2)(A). Pub. L. 103–465, § 314(d)(1), struck out ''(other than the agreement on subsidies and countervailing measures described in section 2503(c)(5) of this title)'' after ''trade agreement''.

Subsec. (a)(3)(A). Pub. L. 103–465, § 314(d)(2)(A), inserted ''does not consider that a trade agreement, including the Agreement on Trade-Related Aspects of Intellectual Property (referred to in section 3511(d)(15) of this title), is involved or'' after ''Trade Representative'' the first place appearing.

Subsec. (a)(3)(B). Pub. L. 103–465, § 314(d)(2)(B), in introductory provisions, substituted ''an investigation initiated by reason of section 2412(b)(2) of this title (other than an investigation involving a trade agreement)'' for ''any investigation initiated by reason of section 2412(b)(2) of this title''.

Subsec. (a)(4). Pub. L. 103–465, § 314(d)(3), struck out ''(other than the agreement on subsidies and countervailing measures described in section 2503(c)(5) of this title)'' after ''in a trade agreement''.

1988—Pub. L. 100–418 amended section generally, substituting provisions relating to determinations by Trade Representative for provisions relating to recommendations by Trade Representative.

1984—Subsec. (a)(1). Pub. L. 98–573, § 304(d)(2)(C), substituted ''matters under investigation'' for ''issues raised in the petition'' in first sentence.

Subsec. (b)(2). Pub. L. 98–573, § 306(c)(2)(C)(ii), struck out ''private sector'' after ''appropriate''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 316(a) of Pub. L. 103–465, set out as an Effective Date note under section 3581 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable to petitions filed, and investigations initiated, under section 2412 of this title on or after Aug. 23, 1988, and petitions filed, and investigations initiated, before Aug. 23, 1988, if by such date no decision had been made under this section regarding the petition or investigation, see section 1301(c) of Pub. L. 100–418, set out as a note under section 2411 of this title.

§ 2415. Implementation of actions

(a) Actions to be taken under section 2411

(1) Except as provided in paragraph (2), the Trade Representative shall implement the action the Trade Representative determines under section 2414(a)(1)(B) of this title to take under section 2411 of this title, subject to the specific direction, if any, of the President regarding any such action, by no later than the date that is 30 days after the date on which such determination is made.

(2)(A) Except as otherwise provided in this paragraph, the Trade Representative may delay, by not more than 180 days, the implementation of any action that is to be taken under section 2411 of this title—

(i) if—

(I) in the case of an investigation initiated under section 2412(a) of this title, the petitioner requests a delay, or

(II) in the case of an investigation initiated under section 2412(b)(1) of this title or to which section 2414(a)(3)(B) of this title ap-

plies, a delay is requested by a majority of the representatives of the domestic industry that would benefit from the action, or

(ii) if the Trade Representative determines that substantial progress is being made, or that a delay is necessary or desirable, to obtain United States rights or a satisfactory solution with respect to the acts, policies, or practices that are the subject of the action.

(B) The Trade Representative may not delay under subparagraph (A) the implementation of any action that is to be taken under section 2411 of this title with respect to any investigation to which section 2414(a)(3)(A)(ii) of this title applies.

(C) The Trade Representative may not delay under subparagraph (A) the implementation of any action that is to be taken under section 2411 of this title with respect to any investigation to which section 2414(a)(3)(B) of this title applies by more than 90 days.

(b) Alternative actions in certain cases of export targeting

(1) If the Trade Representative makes an affirmative determination under section 2414(a)(1)(A) of this title involving export targeting by a foreign country and determines to take no action under section 2411 of this title with respect to such affirmation determination, the Trade Representative—

(A) shall establish an advisory panel to recommend measures which will promote the competitiveness of the domestic industry affected by the export targeting,

(B) on the basis of the report of such panel submitted under paragraph (2)(B) and subject to the specific direction, if any, of the President, may take any administrative actions authorized under any other provision of law, and, if necessary, propose legislation to implement any other actions, that would restore or improve the international competitiveness of the domestic industry affected by the export targeting, and

(C) shall, by no later than the date that is 30 days after the date on which the report of such panel is submitted under paragraph (2)(B), submit a report to the Congress on the administrative actions taken, and legislative proposals made, under subparagraph (B) with respect to the domestic industry affected by the export targeting.

(2)(A) The advisory panels established under paragraph (1)(A) shall consist of individuals appointed by the Trade Representative who—

(i) earn their livelihood in the private sector of the economy, including individuals who represent management and labor in the domestic industry affected by the export targeting that is the subject of the affirmative determination made under section 2414(a)(1)(A) of this title, and

(ii) by education or experience, are qualified to serve on the advisory panel.

(B) By no later than the date that is 6 months after the date on which an advisory panel is established under paragraph (1)(A), the advisory panel shall submit to the Trade Representative and to the Congress a report on measures that the advisory panel recommends be taken by the United States to promote the competitiveness of the domestic industry affected by the export targeting that is the subject of the affirmative determination made under section 2414(a)(1)(A) of this title.

(Pub. L. 93–618, title III, §305, as added Pub. L. 96–39, title IX, §901, July 26, 1979, 93 Stat. 299; amended Pub. L. 98–573, title III, §304(g), Oct. 30, 1984, 98 Stat. 3006; Pub. L. 100–418, title I, §1301(a), Aug. 23, 1988, 102 Stat. 1172; Pub. L. 108–429, title II, §2201(c), Dec. 3, 2004, 118 Stat. 2599.)

AMENDMENTS

2004—Subsec. (a)(2)(B). Pub. L. 108–429 substituted ''section 2414(a)(3)(A)(ii)'' for ''section 2414(a)(3)(A)''.

1988—Pub. L. 100–418 amended section generally, substituting provisions relating to implementation of actions for provisions relating to requests for information. See section 2418 of this title.

1984—Subsec. (c). Pub. L. 98–573 added subsec. (c).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable to petitions filed, and investigations initiated, under section 2412 of this title on or after Aug. 23, 1988, and petitions filed, and investigations initiated, before Aug. 23, 1988, if by such date no decision had been made under section 2414 of this title regarding the petition or investigation, see section 1301(c) of Pub. L. 100–418, set out as a note under section 2411 of this title.

§ 2416. Monitoring of foreign compliance

(a) In general

The Trade Representative shall monitor the implementation of each measure undertaken, or agreement that is entered into, by a foreign country to provide a satisfactory resolution of a matter subject to investigation under this subchapter or subject to dispute settlement proceedings to enforce the rights of the United States under a trade agreement providing for such proceedings.

(b) Further action

(1) In general

If, on the basis of the monitoring carried out under subsection (a) of this section, the Trade Representative considers that a foreign country is not satisfactorily implementing a measure or agreement referred to in subsection (a) of this section, the Trade Representative shall determine what further action the Trade Representative shall take under section 2411(a) of this title. For purposes of section 2411 of this title, any such determination shall be treated as a determination made under section 2414(a)(1) of this title.

(2) WTO dispute settlement recommendations

(A) Failure to implement recommendation

If the measure or agreement referred to in subsection (a) of this section concerns the implementation of a recommendation made pursuant to dispute settlement proceedings under the World Trade Organization, and the Trade Representative considers that the foreign country has failed to implement it, the Trade Representative shall make the determination in paragraph (1) no later than 30 days after the expiration of the reasonable

period of time provided for such implementation under paragraph 21 of the Understanding on Rules and Procedures Governing the Settlement of Disputes that is referred to in section 3511(d)(16) of this title.

(B) Revision of retaliation list and action

(i) In general

Except as provided in clause (ii), in the event that the United States initiates a retaliation list or takes any other action described in section 2411(c)(1)(A) or (B) of this title against the goods of a foreign country or countries because of the failure of such country or countries to implement the recommendation made pursuant to a dispute settlement proceeding under the World Trade Organization, the Trade Representative shall periodically revise the list or action to affect other goods of the country or countries that have failed to implement the recommendation.

(ii) Exception

The Trade Representative is not required to revise the retaliation list or the action described in clause (i) with respect to a country, if—

(I) the Trade Representative determines that implementation of a recommendation made pursuant to a dispute settlement proceeding described in clause (i) by the country is imminent; or

(II) the Trade Representative together with the petitioner involved in the initial investigation under this subchapter (or if no petition was filed, the affected United States industry) agree that it is unnecessary to revise the retaliation list.

(C) Schedule for revising list or action

The Trade Representative shall, 120 days after the date the retaliation list or other section 2411(a) action is first taken, and every 180 days thereafter, review the list or action taken and revise, in whole or in part, the list or action to affect other goods of the subject country or countries.

(D) Standards for revising list or action

In revising any list or action against a country or countries under this subsection, the Trade Representative shall act in a manner that is most likely to result in the country or countries implementing the recommendations adopted in the dispute settlement proceeding or in achieving a mutually satisfactory solution to the issue that gave rise to the dispute settlement proceeding. The Trade Representative shall consult with the petitioner, if any, involved in the initial investigation under this subchapter.

(E) Retaliation list

The term ''retaliation list'' means the list of products of a foreign country or countries that have failed to comply with the report of the panel or Appellate Body of the WTO and with respect to which the Trade Representative is imposing duties above the level that would otherwise be imposed under the Harmonized Tariff Schedule of the United States.

(F) Requirement to include reciprocal goods on retaliation list

The Trade Representative shall include on the retaliation list, and on any revised lists, reciprocal goods of the industries affected by the failure of the foreign country or countries to implement the recommendation made pursuant to a dispute settlement proceeding under the World Trade Organization, except in cases where existing retaliation and its corresponding preliminary retaliation list do not already meet this requirement.

(c) Consultations

Before making any determination under subsection (b) of this section, the Trade Representative shall—

(1) consult with the petitioner, if any, involved in the initial investigation under this subchapter and with representatives of the domestic industry concerned; and

(2) provide an opportunity for the presentation of views by interested persons.

(Pub. L. 93–618, title III, § 306, as added Pub. L. 96–39, title IX, § 901, July 26, 1979, 93 Stat. 299; amended Pub. L. 100–418, title I, § 1301(a), Aug. 23, 1988, 102 Stat. 1173; Pub. L. 103–465, title III, § 314(e), Dec. 8, 1994, 108 Stat. 4941; Pub. L. 104–295, § 20(c)(1), Oct. 11, 1996, 110 Stat. 3528; Pub. L. 106–200, title IV, § 407, May 18, 2000, 114 Stat. 293.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (b)(2)(E), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

AMENDMENTS

2000—Subsec. (b)(2). Pub. L. 106–200 designated existing provisions as subpar. (A), inserted heading, and added subpars. (B) to (F).

1996—Subsec. (b)(1). Pub. L. 104–295 made technical amendment to Pub. L. 103–465. See 1994 Amendment note below.

1994—Subsecs. (a), (b). Pub. L. 103–465, as amended by Pub. L. 104–295, amended subsecs. (a) and (b) generally. Prior to amendment, subsecs. (a) and (b) read as follows:

''(a) IN GENERAL.—The Trade Representative shall monitor the implementation of each measure undertaken, or agreement of a kind described in clause (i), (ii), or (iii) of section 2411(a)(2)(B) of this title that is entered into under subsection (a) or (b) of section 2411 of this title, by a foreign country—

''(1) to enforce the rights of the United States under any trade agreement, or

''(2) to eliminate any act, policy, or practice described in subsection (a)(1)(B) or (b)(1) of section 2411 of this title.

''(b) FURTHER ACTION.—If, on the basis of the monitoring carried out under subsection (a) of this section, the Trade Representative considers that a foreign country is not satisfactorily implementing a measure or agreement referred to in subsection (a) of this section, the Trade Representative shall determine what further action the Trade Representative shall take under section 2411(a) of this title. For purposes of section 2411 of this title, any such determination shall be treated as a determination made under section 2414(a)(1) of this title.''

1988—Pub. L. 100–418 amended section generally, substituting provisions relating to monitoring of foreign compliance for provisions relating to administration. See section 2419 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 316(a) of Pub. L. 103–465, set out as an Effective Date note under section 3581 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable to petitions filed, and investigations initiated, under section 2412 of this title on or after Aug. 23, 1988, and petitions filed, and investigations initiated, before Aug. 23, 1988, if by such date no decision had been made under section 2414 of this title regarding the petition or investigation, see section 1301(c) of Pub. L. 100–418, set out as a note under section 2411 of this title.

§ 2417. Modification and termination of actions

(a) In general

(1) The Trade Representative may modify or terminate any action, subject to the specific direction, if any, of the President with respect to such action, that is being taken under section 2411 of this title if—

(A) any of the conditions described in section 2411(a)(2) of this title exist,

(B) the burden or restriction on United States commerce of the denial rights, or of the acts, policies, and practices, that are the subject of such action has increased or decreased, or

(C) such action is being taken under section 2411(b) of this title and is no longer appropriate.

(2) Before taking any action under paragraph (1) to modify or terminate any action taken under section 2411 of this title, the Trade Representative shall consult with the petitioner, if any, and with representatives of the domestic industry concerned, and shall provide opportunity for the presentation of views by other interested persons affected by the proposed modification or termination concerning the effects of the modification or termination and whether any modification or termination of the action is appropriate.

(b) Notice; report to Congress

The Trade Representative shall promptly publish in the Federal Register notice of, and report in writing to the Congress with respect to, any modification or termination of any action taken under section 2411 of this title and the reasons therefor.

(c) Review of necessity

(1) If—

(A) a particular action has been taken under section 2411 of this title during any 4-year period, and

(B) neither the petitioner nor any representative of the domestic industry which benefits from such action has submitted to the Trade Representative during the last 60 days of such 4-year period a written request for the continuation of such action,

such action shall terminate at the close of such 4-year period.

(2) The Trade Representative shall notify by mail the petitioner and representatives of the domestic industry described in paragraph (1)(B) of any termination of action by reason of paragraph (1) at least 60 days before the date of such termination.

(3) If a request is submitted to the Trade Representative under paragraph (1)(B) to continue taking a particular action under section 2411 of this title, the Trade Representative shall conduct a review of—

(A) the effectiveness in achieving the objectives of section 2411 of this title of—

(i) such action, and

(ii) other actions that could be taken (including actions against other products or services), and

(B) the effects of such actions on the United States economy, including consumers.

(Pub. L. 93–618, title III, § 307, as added Pub. L. 100–418, title I, § 1301(a), Aug. 23, 1988, 102 Stat. 1174.)

EFFECTIVE DATE

Section applicable to petitions filed, and investigations initiated, under section 2412 of this title on or after Aug. 23, 1988, and petitions filed, and investigations initiated, before Aug. 23, 1988, if by such date no decision had been made under section 2414 of this title regarding the petition or investigation, see section 1301(c) of Pub. L. 100–418, set out as an Effective Date of 1988 Amendment note under section 2411 of this title.

§ 2418. Request for information

(a) In general

Upon receipt of written request therefor from any person, the Trade Representative shall make available to that person information (other than that to which confidentiality applies) concerning—

(1) the nature and extent of a specific trade policy or practice of a foreign country with respect to particular goods, services, investment, or intellectual property rights, to the extent that such information is available to the Trade Representative or other Federal agencies;

(2) United States rights under any trade agreement and the remedies which may be available under that agreement and under the laws of the United States; and

(3) past and present domestic and international proceedings or actions with respect to the policy or practice concerned.

(b) If information not available

If information that is requested by a person under subsection (a) of this section is not available to the Trade Representative or other Federal agencies, the Trade Representative shall, within 30 days after receipt of the request—

(1) request the information from the foreign government; or

(2) decline to request the information and inform the person in writing of the reasons for refusal.

(c) Certain business information not made available

(1) Except as provided in paragraph (2), and notwithstanding any other provision of law (in-

cluding section 552 of title 5), no information requested and received by the Trade Representative in aid of any investigation under this subchapter shall be made available to any person if—

(A) the person providing such information certifies that—

(i) such information is business confidential,

(ii) the disclosure of such information would endanger trade secrets or profitability, and

(iii) such information is not generally available;

(B) the Trade Representative determines that such certification is well-founded; and

(C) to the extent required in regulations prescribed by the Trade Representative, the person providing such information provides an adequate nonconfidential summary of such information.

(2) The Trade Representative may—

(A) use such information, or make such information available (in his own discretion) to any employee of the Federal Government for use, in any investigation under this subchapter, or

(B) may make such information available to any other person in a form which cannot be associated with, or otherwise identify, the person providing the information.

(Pub. L. 93–618, title III, § 308, as added Pub. L. 100–418, title I, § 1301(a), Aug. 23, 1988, 102 Stat. 1175.)

EFFECTIVE DATE

Section applicable to petitions filed, and investigations initiated, under section 2412 of this title on or after Aug. 23, 1988, and petitions filed, and investigations initiated, before Aug. 23, 1988, if by such date no decision had been made under section 2414 of this title regarding the petition or investigation, see section 1301(c) of Pub. L. 100–418, set out as an Effective Date of 1988 Amendment note under section 2411 of this title.

§ 2419. Administration

The Trade Representative shall—

(1) issue regulations concerning the filing of petitions and the conduct of investigations and hearings under this subchapter,

(2) keep the petitioner regularly informed of all determinations and developments regarding the investigation conducted with respect to the petition under this subchapter, including the reasons for any undue delays, and

(3) submit a report to the House of Representatives and the Senate semiannually describing—

(A) the petitions filed and the determinations made (and reasons therefor) under section 2412 of this title,

(B) developments in, and the current status of, each investigation or proceeding under this subchapter,

(C) the actions taken, or the reasons for no action, by the Trade Representative under section 2411 of this title with respect to investigations conducted under this subchapter, and

(D) the commercial effects of actions taken under section 2411 of this title.

(Pub. L. 93–618, title III, § 309, as added Pub. L. 100–418, title I, § 1301(a), Aug. 23, 1988, 102 Stat. 1175.)

EFFECTIVE DATE

Section applicable to petitions filed, and investigations initiated, under section 2412 of this title on or after Aug. 23, 1988, and petitions filed, and investigations initiated, before Aug. 23, 1988, if by such date no decision had been made under section 2414 of this title regarding the petition or investigation, see section 1301(c) of Pub. L. 100–418, set out as an Effective Date of 1988 Amendment note under section 2411 of this title.

§ 2420. Identification of trade expansion priorities

(a) Identification

(1) Within 180 days after the submission in calendar year 1995 of the report required by section 2241(b) of this title, the Trade Representative shall—

(A) review United States trade expansion priorities,

(B) identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent, and

(C) submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives and publish in the Federal Register a report on the priority foreign country practices identified.

(2) In identifying priority foreign country practices under paragraph (1) of this section, the Trade Representative shall take into account all relevant factors, including—

(A) the major barriers and trade distorting practices described in the National Trade Estimate Report required under section 2241(b) of this title;

(B) the trade agreements to which a foreign country is a party and its compliance with those agreements;

(C) the medium- and long-term implications of foreign government procurement plans; and

(D) the international competitive position and export potential of United States products and services.

(3) The Trade Representative may include in the report, if appropriate—

(A) a description of foreign country practices that may in the future warrant identification as priority foreign country practices; and

(B) a statement about other foreign country practices that were not identified because they are already being addressed by provisions of United States trade law, by existing bilateral trade agreements, or as part of trade negotiations with other countries and progress is being made toward the elimination of such practices.

(b) Initiation of investigations

By no later than the date which is 21 days after the date on which a report is submitted to the appropriate congressional committees under subsection (a)(1) of this section, the Trade Representative shall initiate under section 2412(b)(1)

of this title investigations under this subchapter with respect to all of the priority foreign country practices identified.

(c) Agreements for elimination of barriers

In the consultations with a foreign country that the Trade Representative is required to request under section 2413(a) of this title with respect to an investigation initiated by reason of subsection (b) of this section, the Trade Representative shall seek to negotiate an agreement that provides for the elimination of the practices that are the subject of the investigation as quickly as possible or, if elimination of the practices is not feasible, an agreement that provides for compensatory trade benefits.

(d) Reports

The Trade Representative shall include in the semiannual report required by section 2419 of this title a report on the status of any investigations initiated pursuant to subsection (b) of this section and, where appropriate, the extent to which such investigations have led to increased opportunities for the export of products and services of the United States.

(Pub. L. 93–618, title III, §310, as added Pub. L. 100–418, title I, §1302(a), Aug. 23, 1988, 102 Stat. 1176; amended Pub. L. 103–465, title III, §314(f), Dec. 8, 1994, 108 Stat. 4941.)

AMENDMENTS

1994—Pub. L. 103–465 amended section generally, changing dates and criteria for submission of certain reports and revising and restructuring provisions relating to identification of trade liberalization priorities, initiation of investigations, and agreements for elimination of barriers.

EX. ORD. NO. 12901. IDENTIFICATION OF TRADE EXPANSION PRIORITIES

Ex. Ord. No. 12901, Mar. 3, 1994, 59 F.R. 10727, as amended by Ex. Ord. No. 12973, Sept. 27, 1995, 60 F.R. 51665, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 141 and 301–310 of the Trade Act of 1974, as amended (the ''Act'') (19 U.S.C. 2171, 2411–2420), and section 301 of title 3, United States Code, and to ensure that the trade policies of the United States advance, to the greatest extent possible, the export of the products and services of the United States and that trade policy resources are used efficiently, it is hereby ordered as follows:

SECTION 1. *Identification*. (a) Within 6 months of the submission of the National Trade Estimate Report (required by section 181(b) of the Act (19 U.S.C. 2241)) for 1996 and 1997, the United States Trade Representative (''Trade Representative'') shall review United States trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. The Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and shall publish in the Federal Register, a report on the priority foreign country practices identified.

(b) In identifying priority foreign country practices under paragraph (a) of this section, the Trade Representative shall take into account all relevant factors, including:

(1) the major barriers and trade distorting practices described in the National Trade Estimate Report;

(2) the trade agreements to which a foreign country is a party and its compliance with those agreements;

(3) the medium-term and long-term implications of foreign government procurement plans; and

(4) the international competitive position and export potential of United States products and services.

(c) The Trade Representative may include in the report, if appropriate, a description of the foreign country practices that may in the future warrant identification as priority foreign country practices. The Trade Representative also may include a statement about other foreign country practices that were not identified because they are already being addressed by provisions of United States trade law, existing bilateral trade agreements, or in trade negotiations with other countries and progress is being made toward their elimination.

SEC. 2. *Initiation of Investigation*. Within 21 days of the submission of the report required by paragraph (a) of section 1, the Trade Representative shall initiate under section 302(b)(1) of the Act (19 U.S.C. 2412(b)(1)) investigations under title III, chapter 1, of the Act [19 U.S.C. 2411 et seq.] with respect to all of the priority foreign country practices identified.

SEC. 3. *Agreements for the Elimination of Barriers*. In the consultations with a foreign country that the Trade Representative is required to request under section 303(a) of the Act (19 U.S.C. 2413(a)) with respect to an investigation initiated by reason of section 2 of this order, the Trade Representative shall seek to negotiate an agreement that provides for the elimination of the practices that are the subject of the investigation as quickly as possible or, if that is not feasible, provides for compensatory trade benefits. The Trade Representative shall monitor any agreement entered into under this section pursuant to the provisions of section 306 of the Act (19 U.S.C. 2416).

SEC. 4. *Reports*. The Trade Representative shall include in the semiannual report required by section 309 of the Act (19 U.S.C. 2419) a report on the status of any investigation initiated pursuant to section 2 of this order and, where appropriate, the extent to which such investigations have led to increased opportunities for the export of products and services of the United States.

SEC. 5. *Presidential Direction*. The authorities delegated pursuant to this order shall be exercised subject to any subsequent direction by the President in a particular matter.

WILLIAM J. CLINTON.

EX. ORD. NO. 13116. IDENTIFICATION OF TRADE EXPANSION PRIORITIES AND DISCRIMINATORY PROCUREMENT PRACTICES

Ex. Ord. No. 13116, Mar. 31, 1999, 64 F.R. 16333, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including title III of the Act of March 3, 1993 [1933], as amended (41 U.S.C. 10d), sections 141 and 301–310 of the Trade Act of 1974, as amended (the Act) (19 U.S.C. 2171, 2411–2420), title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–2518), and section 301 of title 3, United States Code, and to ensure that the trade policies of the United States advance, to the greatest extent possible, the export of the products and services of the United States and that trade policy resources are used efficiently, it is hereby ordered as follows:

PART I: IDENTIFICATION OF TRADE EXPANSION PRIORITIES

SECTION 1. *Identification and Annual Report*. (a) Within 30 days of the submission of the National Trade Estimate Report required by section 181(b) of the Act (19 U.S.C. 2241(b)) for 1999, 2000, and 2001, the United States Trade Representative (Trade Representative) shall review United States trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent.

The Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and shall publish in the Federal Register, a report on the priority foreign country practices identified.

(b) In identifying priority foreign country practices under paragraph (a) of this section, the Trade Representative shall take into account all relevant factors, including:

(1) the major barriers and trade distorting practices described in the National Trade Estimate Report;

(2) the trade agreements to which a foreign country is a party and its compliance with those agreements;

(3) the medium-term and long-term implications of foreign government procurement plans; and

(4) the international competitive position and export potential of United States products and services.

(c) The Trade Representative may include in the report, if appropriate, a description of the foreign country practices that may in the future warrant identification as priority foreign country practices. The Trade Representative also may include a statement about other foreign country practices that were not identified because they are already being addressed by provisions of United States trade law, existing bilateral trade agreements, or in trade negotiations with other countries and progress is being made toward their elimination.

SEC. 2. *Resolution*. Upon submission of the report required by paragraph (a) of section 1 of this part, the Trade Representative shall, with respect to any priority foreign country practice identified therein, engage the country concerned for the purpose of seeking a satisfactory resolution, for example, by obtaining compliance with a trade agreement or the elimination of the practice as quickly as possible, or, if this is not feasible, by providing for compensatory trade benefits.

SEC. 3. *Initiation of Investigations*. Within 90 days of the submission of the report required by paragraph (a) of section 1 of this part, the Trade Representative shall initiate under section 302(b)(1) of the Act (19 U.S.C. 2412(b)(1)) investigations with respect to all of the priority foreign country practices identified, unless during the 90-day period the Trade Representative determines that a satisfactory resolution of the matter to be investigated has been achieved.

PART II: IDENTIFICATION OF DISCRIMINATORY GOVERNMENT PROCUREMENT PRACTICES

SECTION 1. *Identification and Annual Report*. (a) Within 30 days of the submission of the National Trade Estimate Report for 1999, 2000, and 2001, the Trade Representative shall submit to the Committees on Finance and on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Committees on Ways and Means and Government Reform and Oversight [now Committee on Oversight and Government Reform] of the House of Representatives, and shall publish in the Federal Register, a report on the extent to which foreign countries discriminate against U.S. products or services in making government procurements.

(b) In the report, the Trade Representative shall identify countries that:

(1) are not in compliance with their obligations under the World Trade Organization Agreement on Government Procurement (the GPA), Chapter 10 of the North American Free Trade Agreement (NAFTA), or other agreements relating to government procurement (procurement agreements) to which that country and the United States are parties; or

(2) maintain, in government procurement, a significant and persistent pattern or practice of discrimination against U.S. products or services that results in identifiable harm to U.S. businesses and whose products or services are acquired in significant amounts by the United States Government.

SEC. 2. *Considerations in Making Identifications*. In making the identifications required by section 1 of this part, the Trade Representative shall: (a) consider the requirements of the GPA, NAFTA, or other procurement agreements, government procurement practices, and the effects of such practices on U.S. businesses as a basis for evaluating whether the procurement practices of foreign governments do not provide fair market opportunities for U.S. products or services;

(b) take into account, among other factors, whether and to what extent countries that are parties to the GPA, NAFTA, or other procurement agreements, and other countries described in section 1 of this part:

(1) use sole-sourcing or otherwise noncompetitive procedures for procurement that could have been conducted using competitive procedures;

(2) conduct what normally would have been one procurement as two or more procurements, to decrease the anticipated contract values below the value threshold of the GPA, NAFTA, or other procurement agreements, or to make the procurement less attractive to U.S. businesses;

(3) announce procurement opportunities with inadequate time intervals for U.S. businesses to submit bids; and

(4) use specifications in such a way as to limit the ability of U.S. suppliers to participate in procurements; and

(c) consider information included in the National Trade Estimate Report, and any other additional criteria deemed appropriate, including, to the extent such information is available, the failure to apply transparent and competitive procedures or maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement.

SEC. 3. *Impact of Noncompliance and Denial of Comparable Treatment*. The Trade Representative shall take into account, in identifying countries in the annual report and in any action required by this part, the relative impact of any noncompliance with the GPA, NAFTA, or other procurement agreements, or of other discrimination on U.S. commerce, and the extent to which such noncompliance or discrimination has impeded the ability of U.S. suppliers to participate in procurements on terms comparable to those available to suppliers of the country in question when seeking to sell goods or services to the United States Government.

SEC. 4. *Resolution*. Upon submission of the report required by section 1 of this part, the Trade Representative shall engage any country identified therein for the purpose of seeking a satisfactory resolution, for example, by obtaining compliance with the GPA, NAFTA, or other procurement agreements or the elimination of the discriminatory procurement practices as quickly as possible, or, if this is not feasible, by providing for compensatory trade benefits.

SEC. 5. *Initiation of Investigations*. (a) Within 90 days of the submission of the report required by section 1 of this part, the Trade Representative shall initiate under section 302(b)(1) of the Act (19 U.S.C. 2412(b)(1)) investigations with respect to any practice that:

(1) was the basis for the identification of a country under section 1; and

(2) is not at that time the subject of any other investigation or action under title III, chapter 1, of the Act [19 U.S.C. 2411 et seq.],

unless during the 90-day period the Trade Representative determines that a satisfactory resolution of the matter to be investigated has been achieved.

(b) For investigations initiated under paragraph (a) of this section (other than an investigation involving the GPA or NAFTA), the Trade Representative shall apply the time limits and procedures in section 304(a)(3) of the Act (19 U.S.C. 2414(a)(3)). The time limits in subsection 304(a)(3)(B) of the Act (19 U.S.C. 2414(a)(3)(B)) shall apply if the Trade Representative determines that:

(1) complex or complicated issues are involved in the investigation that require additional time;

(2) the foreign country involved in the investigation is making substantial progress in drafting or implementing legislative or administrative measures that will end the discriminatory procurement practice; or

(3) such foreign country is undertaking enforcement measures to end the discriminatory procurement practice.

PART III: DIRECTION

SECTION 1. *Presidential Direction.* The authorities delegated pursuant to this order shall be exercised subject to any subsequent direction by the President in a particular matter.

SEC. 2. *Consultations and Advice.* In developing the annual reports required by part I and part II of this order, the Trade Representative shall consult with executive agencies and seek information and advice from U.S. businesses in the United States and in the countries involved in the practices under consideration.

WILLIAM J. CLINTON.

SUBCHAPTER IV—TRADE RELATIONS WITH COUNTRIES NOT RECEIVING NONDISCRIMINATORY TREATMENT

PART 1—TRADE RELATIONS WITH CERTAIN COUNTRIES

§ 2431. Exception of products of certain countries or areas

Except as otherwise provided in this subchapter, the President shall continue to deny nondiscriminatory treatment to the products of any country, the products of which were not eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on January 3, 1975.

(Pub. L. 93–618, title IV, § 401, Jan. 3, 1975, 88 Stat. 2056.)

REFERENCES IN TEXT

The Tariff Schedules of the United States, referred to in text, to be treated as a reference to the Harmonized Tariff Schedule pursuant to section 3012 of this title. The Harmonized Tariff Schedule is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

REPORT ON EFFECT OF SUBCHAPTER; RECOMMENDATIONS

Pub. L. 95–501, title VI, § 604, Oct. 21, 1978, 92 Stat. 1692, which provided that within six months after Oct. 21, 1978, the Secretary of Agriculture submit to Congress a report detailing the effect on United States agriculture of this subchapter, including a recommendation as to whether the provisions of this subchapter should be repealed or amended, was omitted in the general revision of Pub. L. 95–501 by Pub. L. 101–624, title XV, § 1531, Nov. 28, 1990, 104 Stat. 3668. See chapter 87 (§ 5601 et seq.) of Title 7, Agriculture.

§ 2432. Freedom of emigration in East-West trade

(a) Actions of nonmarket economy countries making them ineligible for normal trade relations, programs of credits, credit guarantees, or investment guarantees, or commercial agreements

To assure the continued dedication of the United States to fundamental human rights, and notwithstanding any other provision of law, on or after January 3, 1975, products from any nonmarket economy country shall not be eligible to receive nondiscriminatory treatment (normal trade relations), such country shall not participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, and the President of the United States shall not conclude any commercial agreement with any such country, during the period beginning with the date on which the President determines that such country—

(1) denies its citizens the right or opportunity to emigrate;

(2) imposes more than a nominal tax on emigration or on the visas or other documents required for emigration, for any purpose or cause whatsoever; or

(3) imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice,

and ending on the date on which the President determines that such country is no longer in violation of paragraph (1), (2), or (3).

(b) Presidential determination and report to Congress that nation is not violating freedom of emigration

After January 3, 1975, (A) products of a nonmarket economy country may be eligible to receive nondiscriminatory treatment (normal trade relations), (B) such country may participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and (C) the President may conclude a commercial agreement with such country, only after the President has submitted to the Congress a report indicating that such country is not in violation of paragraph (1), (2), or (3) of subsection (a) of this section. Such report with respect to such country shall include information as to the nature and implementation of emigration laws and policies and restrictions or discrimination applied to or against persons wishing to emigrate. The report required by this subsection shall be submitted initially as provided herein and, with current information, on or before each June 30 and December 31 thereafter so long as such treatment is received, such credits or guarantees are extended, or such agreement is in effect.

(c) Waiver authority of President

(1) During the 18-month period beginning on January 3, 1975, the President is authorized to waive by Executive order the application of subsections (a) and (b) of this section with respect to any country, if he reports to the Congress that—

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(2) During any period subsequent to the 18-month period referred to in paragraph (1), the President is authorized to waive by Executive order the application of subsections (a) and (b) of this section with respect to any country, if the waiver authority granted by this subsection continues to apply to such country pursuant to subsection (d) of this section, and if he reports to the Congress that—

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(3) A waiver with respect to any country shall terminate on the day after the waiver authority granted by this subsection ceases to be effective with respect to such country pursuant to subsection (d) of this section. The President may, at any time, terminate by Executive order any waiver granted under this subsection.

(d) Extension of waiver authority

(1) If the President determines that the further extension of the waiver authority granted under subsection (c) of this section will substantially promote the objectives of this section, he may recommend further extensions of such authority for successive 12-month periods. Any such recommendations shall—

(A) be made not later than 30 days before the expiration of such authority;

(B) be made in a document transmitted to the House of Representatives and the Senate setting forth his reasons for recommending the extension of such authority; and

(C) include, for each country with respect to which a waiver granted under subsection (c) of this section is in effect, a determination that continuation of the waiver applicable to that country will substantially promote the objectives of this section, and a statement setting forth his reasons for such determination.

If the President recommends the further extension of such authority, such authority shall continue in effect until the end of the 12-month period following the end of the previous 12-month extension with respect to any country (except for any country with respect to which such authority has not been extended under this subsection), unless a joint resolution described in section 2193(a) of this title is enacted into law pursuant to the provisions of paragraph (2).

(2)(A) The requirements of this paragraph are met if the joint resolution is enacted under the procedures set forth in section 2193 of this title, and—

(i) the Congress adopts and transmits the joint resolution to the President before the end of the 60-day period beginning on the date the waiver authority would expire but for an extension under paragraph (1), and

(ii) if the President vetoes the joint resolution, each House of Congress votes to override such veto on or before the later of the last day of the 60-day period referred to in clause (i) or the last day of the 15-day period (excluding any day described in section 2194(b) of this title) beginning on the date the Congress receives the veto message from the President.

(B) If a joint resolution is enacted into law under the provisions of this paragraph, the waiver authority applicable to any country with respect to which the joint resolution disapproves of the extension of such authority shall cease to be effective as of the day after the 60-day period beginning on the date of the enactment of the joint resolution.

(C) A joint resolution to which this subsection and section 2193 of this title apply may be introduced at any time on or after the date the President transmits to the Congress the document described in paragraph (1)(B).

(e) Countries not covered

This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on January 3, 1975.

(Pub. L. 93–618, title IV, § 402, Jan. 3, 1975, 88 Stat. 2056; Pub. L. 96–39, title XI, § 1106(f)(1), July 26, 1979, 93 Stat. 312; Pub. L. 101–382, title I, § 132(a)(1), (2), Aug. 20, 1990, 104 Stat. 643, 644; Pub. L. 105–206, title V, § 5003(b)(2)(A), July 22, 1998, 112 Stat. 789.)

REFERENCES IN TEXT

The Tariff Schedules of the United States, referred to in subsec. (e), to be treated as a reference to the Harmonized Tariff Schedule, see Pub. L. 100–418, title I, § 1212, Aug. 23, 1988, 102 Stat. 1155, classified to section 3012 of this title. The Harmonized Tariff Schedule is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

AMENDMENTS

1998—Subsecs. (a), (b). Pub. L. 105–206 substituted ''(normal trade relations)'' for ''(most-favored-nation treatment)''.

1990—Subsec. (d)(1). Pub. L. 101–382, § 132(a)(1), (2)(A), (B), redesignated par. (5) as (1), and substituted ''If the President determines that the further extension of the waiver authority granted under subsection (c) of this section will'' for ''If the waiver authority granted by subsection (c) of this section has been extended under paragraph (3) or (4) for any country for the 12-month period referred to in such paragraphs, and the President determines that the further extension of such authority will'' in introductory provisions, substituted '', unless a joint resolution described in section 2193(a) of this title is enacted into law pursuant to the provisions of paragraph (2).'' for '', unless before the end of the 60-day period following such previous 12-month extension, either the House of Representatives or the Senate adopts, by an affirmative vote of a majority of the Members present and voting in that House and under the procedures set forth in section 2193 of this title, a resolution disapproving the extension of such authority generally or with respect to such country specifically. Such authority shall cease to be effective with respect to all countries on the date of the adoption by either House before the end of such 60-day period of a resolution disapproving the extension of such authority, and shall cease to be effective with respect to any country on the date of the adoption by either House before the end of such 60-day period of a resolution disapproving the extension of such authority with respect to such country.'' in concluding provisions, and struck out former par. (1) which read as follows: ''If the President determines that the extension of the waiver authority granted by subsection (c)(1) of this section will substantially promote the objectives of this section, he may recommend to the Congress that such authority be extended for a period of 12 months. Any such recommendation shall—

''(A) be made not later than 30 days before the expiration of such authority;

''(B) be made in the document transmitted to the House of Representatives and the Senate setting forth his reasons for recommending the extension of such authority; and

''(C) include, for each country with respect to which a waiver granted under subsection (c)(1) of this section is in effect, a determination that continuation of the waiver applicable to that country will substan-

tially promote the objectives of this section, and a statement setting forth his reasons for such determination.''

Subsec. (d)(2). Pub. L. 101–382, § 132(a)(2)(A), (C), added par. (2) and struck out former par. (2) which authorized extension of waiver authority for 12-month period upon recommendation of President and adoption of concurrent resolution approving extension of authority and not excluding country, and provided procedures if such resolution was not adopted.

Subsec. (d)(3), (4). Pub. L. 101–382, § 132(a)(2)(A), struck out par. (3) which authorized extension of waiver authority upon recommendation of President for 60 days, and for 12 months if before end of 60-day period concurrent resolution was adopted approving extension of authority and failing to exclude particular country, and provided procedures if such resolution was not adopted, and struck out par. (4) which authorized extension of waiver authority for 12 months upon recommendation of President if Congress failed to adopt concurrent resolution approving extension under par. (3) and also failed to adopt, in 45-day period following 60-day period, concurrent resolution disapproving extension generally or with respect to particular country.

Subsec. (d)(5). Pub. L. 101–382, § 132(a)(2)(B), redesignated par. (5) as (1).

1979—Subsec. (c)(1). Pub. L. 96–39 substituted ''subsections (a) and (b) of this section'' for ''subsection (a) and (b) of this section'' in provisions preceding subpar. (A).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 132(d) of Pub. L. 101–382 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 2191 to 2194, 2435, and 2437 of this title] take effect on the date of the enactment of this Act [Aug. 20, 1990].

''(2) EXTENSION OF WAIVER AUTHORITY.—

''(A) The amendments made by subsections (a) and (c)(4) and (5) [amending this section and sections 2192 and 2193 of this title] apply with respect to recommendations made under section 402(d) of the Trade Act of 1974 [subsec. (d) of this section] by the President after May 23, 1990.

''(B) Solely for purposes of applying the applicable provisions of the Trade Act of 1974 [this chapter] with respect to the recommendations made by the President to the House of Representatives and the Senate under subsection (d) of section 402 of the Trade Act of 1974 after May 23, 1990, and on or before the date of the enactment of this Act—

''(i) in paragraph (2)(A)(i) of subsection (d) of such section 402 (as amended by subsection (a)), the date on which the waiver authority granted under subsection (c) of such section 402 would expire but for an extension under paragraph (1) of such subsection (d) is the date of the enactment of this Act;

''(ii) paragraph (2)(A)(ii) of subsection (d) of such section 402 (as amended by subsection (a)) shall be treated as reading as follows:

'' '(ii) if the President vetoes the joint resolution, each House of Congress votes to override such veto on or before the last day of the 60-day period referred to in clause (i).';

''(iii) if the waiver authority granted under such subsection (c) is extended after application of clauses (i) and (ii), the expiration date for such authority is July 3, 1991; and

''(iv) only joint resolutions described in section 153(a) of the Trade Act of 1974 [section 2193(a) of this title] (as amended by subsection (a)) that are introduced in the House of Representatives or the Senate on or after the date of the enactment of this Act may be considered by either body.''

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective July 26, 1979, see section 1114 of Pub. L. 96–39, set out as an Effective Date note under section 2581 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (d)(1) of this section delegated to Secretary of State by section 1(a)(i) of Ex. Ord. No. 13346, July 8, 2004, 69 F.R. 41905, set out as a note under section 301 of Title 3, The President.

For delegation of congressional reporting functions of President under subsec. (b) of this section, see section 1 of Ex. Ord. No. 13313, July 31, 2003, 68 F.R. 46073, set out as a note under section 301 of Title 3, The President.

WAIVER OF SUBSECTIONS (a) AND (b) BY EXECUTIVE ORDER

The following Executive orders waived the application of subsections (a) and (b) of this section for the countries listed:

Ex. Ord. No. 11854, Apr. 24, 1975, 40 F.R. 18391.—Socialist Republic of Romania.

Ex. Ord. No. 12051, Apr. 7, 1978, 43 F.R. 15131.—Hungarian People's Republic.

Ex. Ord. No. 12167, Oct. 23, 1979, 44 F.R. 61167.—People's Republic of China.

Ex. Ord. No. 12702, Feb. 20, 1990, 55 F.R. 6231.—Czechoslovakia.

Ex. Ord. No. 12726, Aug. 15, 1990, 55 F.R. 33637.—German Democratic Republic.

Ex. Ord. No. 12740, Dec. 29, 1990, 56 F.R. 355.—Soviet Union.

Ex. Ord. No. 12745, Jan. 22, 1991, 56 F.R. 2835.—Bulgaria.

Ex. Ord. No. 12746, Jan. 23, 1991, 56 F.R. 2837.—Mongolia.

Ex. Ord. No. 12772, Aug. 17, 1991, 56 F.R. 41621.—Romania.

Ex. Ord. No. 12798, Apr. 6, 1992, 57 F.R. 12175.—Armenia.

Ex. Ord. No. 12802, Apr. 16, 1992, 57 F.R. 14321.—Republic of Byelarus, Republic of Kyrgyzstan, and Russian Federation.

Ex. Ord. No. 12809, June 3, 1992, 57 F.R. 23925.—Albania, Azerbaijan, Georgia, Kazakhstan, Moldova, Ukraine, and Uzbekistan.

Ex. Ord. No. 12811, June 24, 1992, 57 F.R. 28585.—Tajikistan and Turkmenistan.

Ex. Ord. No. 13079, Apr. 7, 1998, 63 F.R. 17309.—Vietnam.

Ex. Ord. No. 13220, July 2, 2001, 66 F.R. 35527.—Republic of Belarus.

Ex. Ord. No. 13314, Aug. 8, 2003, 68 F.R. 48249.—Turkmenistan.

Ex. Ord. No. 13437, June 28, 2007, 72 F.R. 36339.—Turkmenistan.

PRESIDENTIAL DETERMINATIONS RELATING TO WAIVERS

The following Presidential Determinations related to waivers or continuation of waivers for the countries listed:

Determination No. 81–8, June 2, 1981, 46 F.R. 30797.—Hungarian People's Republic, People's Republic of China, and Socialist Republic of Romania.

Determination No. 83–7, June 3, 1983, 48 F.R. 26585.—Hungarian People's Republic, People's Republic of China, and Socialist Republic of Romania.

Determination No. 84–9, May 31, 1984, 49 F.R. 24107.—Hungarian People's Republic, People's Republic of China, and Socialist Republic of Romania.

Determination No. 86–10, June 3, 1986, 51 F.R. 22057.—Hungarian People's Republic, People's Republic of China, and Socialist Republic of Romania.

Determination No. 87–14, June 2, 1987, 52 F.R. 22431.—Hungarian People's Republic, People's Republic of China, and Socialist Republic of Romania.

Determination No. 88–18, June 3, 1988, 53 F.R. 21407.—Hungarian People's Republic and People's Republic of China.

Determination No. 89–14, May 31, 1989, 54 F.R. 26943.—Hungarian People's Republic and People's Republic of China.

Determination No. 90–10, Feb. 20, 1990, 55 F.R. 8899.—Czechoslovakia.
Determination No. 90–21, May 24, 1990, 55 F.R. 23183.—People's Republic of China.
Determination No. 90–22, June 3, 1990, 55 F.R. 42831.—Czech and Slovak Federal Republic.
Determination No. 90–30, Aug. 15, 1990, 55 F.R. 35421.—German Democratic Republic.
Determination No. 91–11, Dec. 29, 1990, 56 F.R. 1561.—Soviet Union.
Determination No. 91–18, Jan. 22, 1991, 56 F.R. 4169.—Bulgaria.
Determination No. 91–19, Jan. 23, 1991, 56 F.R. 4171.—Mongolia.
Determination No. 91–36, May 29, 1991, 56 F.R. 26757.—People's Republic of China.
Determination No. 91–39, June 3, 1991, 56 F.R. 27187.—Republic of Bulgaria, Czech and Slovak Federal Republic, Soviet Union, and Mongolian People's Republic.
Determination No. 91–48, Aug. 17, 1991, 56 F.R. 43861.—Romania.
Determination No. 92–3, Oct. 16, 1991, 56 F.R. 55203.—Czech and Slovak Federal Republic.
Determination No. 92–20, Apr. 3, 1992, 57 F.R. 13623.—Armenia, Belarus, Kyrgyzstan, and Russia.
Determination No. 92–25, May 6, 1992, 57 F.R. 22147.—Azerbaijan, Georgia, Kazakhstan, Moldova, Ukraine, and Uzbekistan.
Determination No. 92–26, May 20, 1992, 57 F.R. 48711.—Albania.
Determination No. 92–29, June 2, 1992, 57 F.R. 24539.—People's Republic of China.
Determination No. 92–30, June 3, 1992, 57 F.R. 24929.—Albania, Armenia, Azerbaijan, Bulgaria, Byelarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russia, Ukraine, and Uzbekistan.
Determination No. 92–31, June 3, 1992, 57 F.R. 24931.—Tajikistan and Turkmenistan.
Determination No. 93–23, May 28, 1993, 58 F.R. 31329.—People's Republic of China.
Determination No. 93–25, June 2, 1993, 58 F.R. 33005.—Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.
Determination No. 94–26, June 2, 1994, 59 F.R. 31103.—People's Republic of China.
Determination No. 94–27, June 2, 1994, 59 F.R. 31105.—Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.
Determination No. 95–23, June 2, 1995, 60 F.R. 31047.—People's Republic of China.
Determination No. 95–24, June 2, 1995, 60 F.R. 31049.—Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.
Determination No. 96–29, May 31, 1996, 61 F.R. 29455.—People's Republic of China.
Determination No. 96–30, June 3, 1996, 61 F.R. 29457.—Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.
Determination No. 97–25, May 29, 1997, 62 F.R. 31313.—People's Republic of China.
Determination No. 97–28, June 3, 1997, 62 F.R. 32019.—Albania, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan.
Determination No. 98–17, Mar. 9, 1998, 63 F.R. 14329.—Vietnam.
Determination No. 98–26, June 3, 1998, 63 F.R. 32705.—People's Republic of China.
Determination No. 98–27, June 3, 1998, 63 F.R. 32707.—Vietnam.
Determination No. 98–28, June 3, 1998, 63 F.R. 32709.—Republic of Belarus.
Determination No. 99–26, June 3, 1999, 64 F.R. 31109.—Republic of Belarus.
Determination No. 99–27, June 3, 1999, 64 F.R. 31111.—Vietnam.
Determination No. 99–28, June 3, 1999, 64 F.R. 31113.—People's Republic of China.
Determination No. 2000–21, June 2, 2000, 65 F.R. 36309.—Vietnam.
Determination No. 2000–22, June 2, 2000, 65 F.R. 36311.—Republic of Belarus.
Determination No. 2000–23, June 2, 2000, 65 F.R. 36313.—People's Republic of China.
Determination No. 2001–16, June 1, 2001, 66 F.R. 30631.—People's Republic of China.
Determination No. 2001–17, June 1, 2001, 66 F.R. 30633.—Vietnam.
Determination No. 2001–20, July 2, 2001, 66 F.R. 37109.—Republic of Belarus.
Determination No. 02–21, June 3, 2002, 67 F.R. 40833.—Republic of Belarus.
Determination No. 02–22, June 3, 2002, 67 F.R. 40835.—Vietnam.
Determination No. 2003–24, May 29, 2003, 68 F.R. 35525.—Vietnam.
Determination No. 2003–25, May 29, 2003, 68 F.R. 35527.—Republic of Belarus.
Determination No. 2003–31, Aug. 8, 2003, 68 F.R. 49325.—Turkmenistan.
Determination No. 2004–32, June 3, 2004, 69 F.R. 32429.—Turkmenistan.
Determination No. 2004–33, June 3, 2004, 69 F.R. 32431.—Republic of Belarus.
Determination No. 2004–34, June 3, 2004, 69 F.R. 32433.—Vietnam.
Determination No. 2007–24, June 28, 2007, 72 F.R. 37421.—Turkmenistan.

§ 2433. United States personnel missing in action in Southeast Asia

(a) Penalty for noncooperating countries

Notwithstanding any other provision of law, if the President determines that a nonmarket economy country is not cooperating with the United States—

(1) to achieve a complete accounting of all United States military and civilian personnel who are missing in action in Southeast Asia,

(2) to repatriate such personnel who are alive, and

(3) to return the remains of such personnel who are dead to the United States,

then, during the period beginning with the date of such determination and ending on the date on which the President determines such country is cooperating with the United States, he may provide that—

(A) the products of such country may not receive nondiscriminatory treatment,

(B) such country may not participate, directly or indirectly, in any program under which the United States extends credit, credit guarantees, or investment guarantees, and

(C) no commercial agreement entered into under this subchapter between such country and the United States will take effect.

(b) Exception

This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on January 3, 1975.

(Pub. L. 93–618, title IV, § 403, Jan. 3, 1975, 88 Stat. 2060.)

REFERENCES IN TEXT

The Tariff Schedules of the United States, referred to in subsec. (b), to be treated as a reference to the Har-

monized Tariff Schedule, pursuant to section 3012 of this title. The Harmonized Tariff Schedule is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

§ 2434. Extension of nondiscriminatory treatment

(a) Presidential proclamation

Subject to the provisions of section 2435(c) of this title, the President may by proclamation extend nondiscriminatory treatment to the products of a foreign country which has entered into a bilateral commercial agreement referred to in section 2435 of this title.

(b) Limitation on period of effectiveness

The application of nondiscriminatory treatment shall be limited to the period of effectiveness of the obligations of the United States to such country under such bilateral commercial agreement. In addition, in the case of any foreign country receiving nondiscriminatory treatment pursuant to this subchapter which has entered into an agreement with the United States regarding the settlement of lendlease reciprocal aid and claims, the application of such nondiscriminatory treatment shall be limited to periods during which such country is not in arrears on its obligations under such agreement.

(c) Suspension or withdrawal of extensions of nondiscriminatory treatment

The President may at any time suspend or withdraw any extension of nondiscriminatory treatment to any country pursuant to subsection (a) of this section and thereby cause all products of such country to be dutiable at the rates set forth in rate column numbered 2 of the Harmonized Tariff Schedule of the United States.

(Pub. L. 93–618, title IV, § 404, Jan. 3, 1975, 88 Stat. 2060; Pub. L. 96–39, title XI, § 1106(f)(2), July 26, 1979, 93 Stat. 312; Pub. L. 100–418, title I, § 1214(j)(3), Aug. 23, 1988, 102 Stat. 1158.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (c), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–418 substituted ''Harmonized Tariff Schedule of the United States'' for ''Tariff Schedules for the United States''.

1979—Subsec. (c). Pub. L. 96–39 struck out the comma after ''subsection (a) of this section''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective July 26, 1979, see section 1114 of Pub. L. 96–39, set out as an Effective Date note under section 2581 of this title.

EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF UKRAINE

Pub. L. 109–205, Mar. 23, 2006, 120 Stat. 313, provided that:

''SECTION 1. FINDINGS.

''Congress finds as follows:

''(1) Ukraine allows its citizens the right and opportunity to emigrate, free of any heavy tax on emigration or on the visas or other documents required for emigration and free of any tax, levy, fine, fee, or other charge on any citizens as a consequence of the desire of such citizens to emigrate to the country of their choice.

''(2) Ukraine has received normal trade relations treatment since 1992 and has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974 [19 U.S.C. 2431 et seq.] since 1997.

''(3) Since the establishment of an independent Ukraine in 1991, Ukraine has made substantial progress toward the creation of democratic institutions and a free-market economy.

''(4) Ukraine has committed itself to ensuring freedom of religion, respect for rights of minorities, and eliminating intolerance and has been a paragon of inter-ethnic cooperation and harmony, as evidenced by the annual human rights reports of the Organization for Security and Cooperation in Europe (OSCE) and the United States Department of State.

''(5) Ukraine has taken major steps toward global security by ratifying the Treaty on the Reduction and Limitation of Strategic Offensive Weapons (START I) and the Treaty on the Non-Proliferation of Nuclear Weapons, subsequently turning over the last of its Soviet-era nuclear warheads on June 1, 1996, and agreeing, in 1998, not to assist Iran with the completion of a program to develop and build nuclear breeding reactors, and has fully supported the United States in nullifying the Anti-Ballistic Missile (ABM) Treaty.

''(6) At the Madrid Summit in 1997, Ukraine became a member of the North Atlantic Cooperation Council of the North Atlantic Treaty Organization (NATO), and has been a participant in the Partnership for Peace (PfP) program since 1994.

''(7) Ukraine is a peaceful state which established exemplary relations with all neighboring countries, and consistently pursues a course of European integration with a commitment to ensuring democracy and prosperity for its citizens.

''(8) Ukraine has built a broad and durable relationship with the United States and has been an unwavering ally in the struggle against international terrorism that has taken place since the attacks against the United States that occurred on September 11, 2001.

''(9) Ukraine has concluded a bilateral trade agreement with the United States that entered into force on June 23, 1992, and is in the process of acceding to the World Trade Organization (WTO). On March 6, 2006, the United States and Ukraine signed a bilateral market access agreement as a part of the WTO accession process.

''SEC. 2. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO THE PRODUCTS OF UKRAINE.

''(a) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

''(1) determine that such title should no longer apply to Ukraine; and

''(2) after making a determination under paragraph (1) with respect to Ukraine, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

''(b) TERMINATION OF APPLICABILITY OF TITLE IV.—On and after the effective date under subsection (a) of the extension of nondiscriminatory treatment to the products of Ukraine [Nondiscriminatory treatment extended Mar. 31, 2006, see Proc. No. 7995, listed in the table of presidential documents below.], title IV of the Trade Act of 1974 shall cease to apply to that country.''

EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF ARMENIA

Pub. L. 108–429, title II, § 2001, Dec. 3, 2004, 118 Stat. 2587, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) Armenia has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974 [19 U.S.C. 2431 et seq.].

''(2) Armenia acceded to the World Trade Organization on February 5, 2003.

''(3) Since declaring its independence from the Soviet Union in 1991, Armenia has made considerable progress in enacting free-market reforms.

''(4) Armenia has demonstrated a strong desire to build a friendly and cooperative relationship with the United States and has concluded many bilateral treaties and agreements with the United States.

''(5) Total United States-Armenia bilateral trade for 2002 amounted to more than $134,200,000.

''(b) PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

''(1) determine that such title should no longer apply to Armenia; and

''(2) after making a determination under paragraph (1) with respect to Armenia, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

''(c) TERMINATION OF APPLICATION OF TITLE IV.—On and after the effective date of the extension under subsection (b)(2) of nondiscriminatory treatment to the products of Armenia [Nondiscriminatory treatment extended Jan. 7, 2005, see Proc. No. 7860, listed in the table of presidential documents below.], title IV of the Trade Act of 1974 shall cease to apply to that country.''

EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF VIETNAM

Pub. L. 109–432, div. D, title IV, §§ 4001, 4002, Dec. 20, 2006, 120 Stat. 3177, 3178, provided that:

''SEC. 4001. FINDINGS.

''Congress finds the following:

''(1) In July 1995, President Bill Clinton announced the formal normalization of diplomatic relations between the United States and Vietnam.

''(2) Vietnam has taken cooperative steps with the United States under the United States Joint POW/MIA Accounting Command (formerly the Joint Task Force-Full Accounting) established in 1992 by President George H.W. Bush to provide the fullest possible accounting of MIA and POW cases.

''(3) In 2000, the United States and Vietnam concluded a bilateral trade agreement that included commitments on goods, services, intellectual property rights, and investment. The agreement was approved by joint resolution enacted pursuant to section 405(c) of the Trade Act of 1974 (19 U.S.C. 2435(c)), and entered into force in December 2001.

''(4) Since 2001, normal trade relations treatment has consistently been extended to Vietnam pursuant to title IV of the Trade Act of 1974 [19 U.S.C. 2431 et seq.].

''(5) Vietnam has undertaken significant market-based economic reforms, including the reduction of government subsidies, tariffs and nontariff barriers, and extensive legal reform. These measures have dramatically improved Vietnam's business and investment climate.

''(6) Vietnam has completed its negotiations to join the World Trade Organization (WTO). On May 31, 2006, the United States and Vietnam signed a comprehensive bilateral agreement providing greater market access for goods and services and other trade liberalizing commitments. On November 7, 2006, the WTO General Council approved Vietnam's membership. Vietnam's National Assembly ratified Vietnam's WTO accession commitments on November 28, 2006, and Vietnam will become the 150th Member of the WTO 30 days thereafter.

''(7) On November 13, 2006, the Department of State removed Vietnam from its list of Countries of Particular Concern (CPC) for severe violations of religious freedom. In reaching this determination, the Department of State cited significant improvements in Vietnam toward advancing religious freedom, though problems remain that merit immediate attention and important work remains to be done to fully protect religious freedom in Vietnam.

''SEC. 4002. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO VIETNAM.

''(a) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF NON-DISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

''(1) determine that such title should no longer apply to Vietnam; and

''(2) after making a determination under paragraph (1) with respect to Vietnam, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

''(b) TERMINATION OF THE APPLICABILITY OF TITLE IV.—On and after the effective date of the extension of nondiscriminatory treatment to the products of Vietnam under subsection (a) [Nondiscriminatory treatment extended Dec. 29, 2006, see Proc. No. 8096, listed in the table of presidential documents below.], title IV of the Trade Act of 1974 [19 U.S.C. 2431 et seq.] shall cease to apply to that country.''

Pub. L. 107–52, Oct. 16, 2001, 115 Stat. 268, provided: ''That the Congress approves the extension of nondiscriminatory treatment with respect to the products of the Socialist Republic of Vietnam transmitted by the President to the Congress on June 8, 2001.''

EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF GEORGIA

Pub. L. 106–476, title III, Nov. 9, 2000, 114 Stat. 2175, provided that:

''SEC. 3001. FINDINGS.

''Congress finds that Georgia has—

''(1) made considerable progress toward respecting fundamental human rights consistent with the objectives of title IV of the Trade Act of 1974 [19 U.S.C. 2431 et seq.];

''(2) adopted administrative procedures that accord its citizens the right to emigrate, travel freely, and to return to their country without restriction;

''(3) been found to be in full compliance with the freedom of emigration provisions in title IV of the Trade Act of 1974;

''(4) made progress toward democratic rule and creating a free market economic system since its independence from the Soviet Union;

''(5) demonstrated strong and effective enforcement of internationally recognized core labor standards and a commitment to continue to improve effective enforcement of its laws reflecting such standards;

''(6) committed to developing a system of governance in accordance with the provisions of the Final Act of the Conference on Security and Cooperation in Europe (also known as the 'Helsinki Final Act') regarding human rights and humanitarian affairs;

''(7) endeavored to address issues related to its national and religious minorities and, as a member state of the Organization for Security and Cooperation in Europe (OSCE), committed to adopting special measures for ensuring that persons belonging to national minorities have full equality individually as well as in community with other members of their group;

''(8) also committed to enacting legislation to provide protection against incitement to violence

against persons or groups based on national, racial, ethnic, or religious discrimination, hostility, or hatred, including anti-Semitism;

''(9) continued to return communal properties confiscated from national and religious minorities during the Soviet period, facilitating the reemergence of these communities in the national life of Georgia and establishing the legal framework for completion of this process in the future;

''(10) concluded a bilateral trade agreement with the United States in 1993 and a bilateral investment treaty in 1994;

''(11) demonstrated a strong desire to build a friendly and cooperative relationship with the United States; and

''(12) acceded to the World Trade Organization on June 14, 2000, and the extension of unconditional normal trade relations treatment to the products of Georgia will enable the United States to avail itself of all rights under the World Trade Organization with respect to Georgia.

''SEC. 3002. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO GEORGIA.

''(a) PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

''(1) determine that such title should no longer apply to Georgia; and

''(2) after making a determination under paragraph (1) with respect to Georgia, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

''(b) TERMINATION OF APPLICATION OF TITLE IV.—On and after the effective date of the extension under subsection (a)(2) of nondiscriminatory treatment to the products of Georgia [Nondiscriminatory treatment extended Dec. 29, 2000, see Proc. No. 7389, listed in the table of presidential documents below.], title IV of the Trade Act of 1974 shall cease to apply to that country.''

EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF PEOPLE'S REPUBLIC OF CHINA

Pub. L. 106–286, div. A, title I, §§101, 102, Oct. 10, 2000, 114 Stat. 881, 882, provided that:

''SEC. 101. TERMINATION OF APPLICATION OF CHAPTER 1 OF TITLE IV OF THE TRADE ACT OF 1974 TO THE PEOPLE'S REPUBLIC OF CHINA.

''(a) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of chapter 1 of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.) [this part], as designated by section 3(a)(2) [103(a)(2)] of this Act, the President may—

''(1) determine that such chapter should no longer apply to the People's Republic of China; and

''(2) after making a determination under paragraph (1) with respect to the People's Republic of China, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

''(b) ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE WORLD TRADE ORGANIZATION.—Prior to making the determination provided for in subsection (a)(1) and pursuant to the provisions of section 122 of the Uruguay Round Agreements Act (19 U.S.C. 3532), the President shall transmit a report to Congress certifying that the terms and conditions for the accession of the People's Republic of China to the World Trade Organization are at least equivalent to those agreed between the United States and the People's Republic of China on November 15, 1999.

''SEC. 102. EFFECTIVE DATE.

''(a) EFFECTIVE DATE OF NONDISCRIMINATORY TREATMENT.—The extension of nondiscriminatory treatment pursuant to section 101(a) shall be effective no earlier than the effective date of the accession of the People's Republic of China to the World Trade Organization [Dec. 11, 2001].

''(b) TERMINATION OF APPLICABILITY OF TITLE IV.—On and after the effective date under subsection (a) of the extension of nondiscriminatory treatment to the products of the People's Republic of China [Nondiscriminatory treatment extended Jan. 1, 2002, see Proc. No. 7516, listed in the table of presidential documents below.], chapter 1 of title IV of the Trade Act of 1974 [this part] (as designated by section 103(a)(2) of this Act) shall cease to apply to that country.''

EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF ALBANIA

Pub. L. 106–200, title III, §301, May 18, 2000, 114 Stat. 288, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) Albania has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974 [19 U.S.C. 2431 et seq.].

''(2) Since its emergence from communism, Albania has made progress toward democratic rule and the creation of a free-market economy.

''(3) Albania has concluded a bilateral investment treaty with the United States.

''(4) Albania has demonstrated a strong desire to build a friendly relationship with the United States and has been very cooperative with NATO and the international community during and after the Kosova crisis.

''(5) The extension of unconditional normal trade relations treatment to the products of Albania will enable the United States to avail itself of all rights under the World Trade Organization with respect to Albania when that country becomes a member of the World Trade Organization.

''(b) TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO ALBANIA.—

''(1) PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

''(A) determine that such title should no longer apply to Albania; and

''(B) after making a determination under subparagraph (A) with respect to Albania, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

''(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extension under paragraph (1)(B) of nondiscriminatory treatment to the products of Albania [Nondiscriminatory treatment extended June 29, 2000, see Proc. No. 7326, listed in the table of presidential documents below.], title IV of the Trade Act of 1974 shall cease to apply to that country.''

EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF KYRGYZSTAN

Pub. L. 106–200, title III, §302, May 18, 2000, 114 Stat. 289, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) Kyrgyzstan has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974 [19 U.S.C. 2431 et seq.].

''(2) Since its independence from the Soviet Union in 1991, Kyrgyzstan has made great progress toward democratic rule and toward creating a free-market economic system.

''(3) Kyrgyzstan concluded a bilateral investment treaty with the United States in 1994.

''(4) Kyrgyzstan has demonstrated a strong desire to build a friendly and cooperative relationship with the United States.

''(5) The extension of unconditional normal trade relations treatment to the products of Kyrgyzstan will enable the United States to avail itself of all rights under the World Trade Organization with respect to Kyrgyzstan.

''(b) TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO KYRGYZSTAN.—

''(1) PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

''(A) determine that such title should no longer apply to Kyrgyzstan; and

''(B) after making a determination under subparagraph (A) with respect to Kyrgyzstan, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

''(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extension under paragraph (1)(B) of nondiscriminatory treatment to the products of Kyrgyzstan [Nondiscriminatory treatment extended June 29, 2000, see Proc. No. 7326, listed in the table of presidential documents below.], title IV of the Trade Act of 1974 shall cease to apply to that country.''

EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF MONGOLIA

Pub. L. 106–36, title II, § 2424, June 25, 1999, 113 Stat. 180, provided that:

''(a) FINDINGS.—The Congress finds that Mongolia—

''(1) has received normal trade relations treatment since 1991 and has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974 [19 U.S.C. 2431 et seq.];

''(2) has emerged from nearly 70 years of communism and dependence on the former Soviet Union, approving a new constitution in 1992 which has established a modern parliamentary democracy charged with guaranteeing fundamental human rights, freedom of expression, and an independent judiciary;

''(3) has held four national elections under the new constitution, two presidential and two parliamentary, thereby solidifying the nation's transition to democracy;

''(4) has undertaken significant market-based economic reforms, including privatization, the reduction of government subsidies, the elimination of most price controls and virtually all import tariffs, and the closing of insolvent banks;

''(5) has concluded a bilateral trade treaty with the United States in 1991, and a bilateral investment treaty in 1994;

''(6) has acceded to the Agreement Establishing the World Trade Organization, and extension of unconditional normal trade relations treatment to the products of Mongolia would enable the United States to avail itself of all rights under the World Trade Organization with respect to Mongolia; and

''(7) has demonstrated a strong desire to build friendly relationships and to cooperate fully with the United States on trade matters.

''(b) TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 to Mongolia.—

''(1) PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

''(A) determine that such title should no longer apply to Mongolia; and

''(B) after making a determination under subparagraph (A) with respect to Mongolia, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

''(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extension under paragraph (1)(B) of nondiscriminatory treatment to the products of Mongolia [Nondiscriminatory treatment extended July 1, 1999, see Proc. No. 7207, listed in the table of presidential documents below.], title IV of the Trade Act of 1974 [19 U.S.C. 2431 et seq.] shall cease to apply to that country.''

EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF ROMANIA

Pub. L. 104–171, Aug. 3, 1996, 110 Stat. 1539, provided that:

''SECTION 1. FINDINGS.

''The Congress finds that—

''(1) Romania emerged from years of brutal Communist dictatorship in 1989 and approved a new Constitution and elected a Parliament by 1991, laying the foundation for a modern parliamentary democracy charged with guaranteeing fundamental human rights, freedom of expression, and respect for private property;

''(2) local elections, parliamentary elections, and presidential elections have been held in Romania, and 1996 will mark the second nationwide presidential elections under the new Constitution;

''(3) Romania has undertaken significant economic reforms, including the establishment of a two-tier banking system, the introduction of a modern tax system, the freeing of most prices and elimination of most subsidies, the adoption of a tariff-based trade regime, and the rapid privatization of industry and nearly all agriculture;

''(4) Romania concluded a bilateral investment treaty with the United States in 1993, and both United States investment in Romania and bilateral trade are increasing rapidly;

''(5) Romania has received most-favored-nation treatment since 1993, and has been found by the President to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974 [19 U.S.C. 2431 et seq.];

''(6) Romania is a member of the World Trade Organization and extension of unconditional most-favored-nation treatment to the products of Romania would enable the United States to avail itself of all rights under the World Trade Organization with respect to Romania; and

''(7) Romania has demonstrated a strong desire to build friendly relationships and to cooperate fully with the United States on trade matters.

''SEC. 2. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO ROMANIA.

''(a) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

''(1) determine that such title should no longer apply to Romania; and

''(2) after making a determination under paragraph (1), proclaim the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of that country.

''(b) TERMINATION OF APPLICATION OF TITLE IV.—On and after the effective date of the extension under subsection (a)(2) of nondiscriminatory treatment to the products of Romania [Nondiscriminatory treatment extended Nov. 12, 1996, see Proc. No. 6951, listed in the table of presidential documents below.], title IV of the Trade Act of 1974 shall cease to apply to that country.''

Pub. L. 103–133, Nov. 2, 1993, 107 Stat. 1373, provided: ''That the Congress approves the extension of nondiscriminatory treatment with respect to the products of Romania transmitted by the President to the Congress on July 2, 1993.''

WITHDRAWAL OF MOST-FAVORED-NATION STATUS FROM SERBIA AND MONTENEGRO

Pub. L. 102–420, Oct. 16, 1992, 106 Stat. 2149, provided that:

''(a) FINDINGS.—The Congress finds that Serbia or Montenegro are not complying with the provisions of

the Final Act of the Conference on Security and Cooperation in Europe (also known as the 'Helsinki Final Act'), particularly the provisions regarding human rights and humanitarian affairs and are not respecting minority rights in Kosovo and Vojvodina.

''(b) WITHDRAWAL OF MFN STATUS.—Except as provided in subsection (c), nondiscriminatory treatment shall not apply with respect to any goods that—

''(1) are the product of Serbia or Montenegro; and

''(2) are entered into the customs territory of the United States on or after the 15th day after the date of the enactment of this Act [Oct. 16, 1992].

''(c) RESTORATION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding subsection (b), the President may restore nondiscriminatory treatment to goods that are the product of Serbia or Montenegro, as the case may be, 30 days after he certifies to the Congress that Serbia or Montenegro, as the case may be—

''(1) has ceased its armed conflict with the other ethnic peoples of the region formerly comprising the Socialist Federal Republic of Yugoslavia;

''(2) has agreed to respect the borders of the 6 republics that comprised the Socialist Federal Republic of Yugoslavia under the 1974 Yugoslav Constitution; and

''(3) has ceased all support of Serbian forces inside Bosnia-Hercegovina.''

EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF REPUBLIC OF ALBANIA

Pub. L. 102–363, Aug. 26, 1992, 106 Stat. 969, provided: ''That the Congress approves the extension of nondiscriminatory treatment with respect to the products of the Republic of Albania transmitted by the President to the Congress on June 16, 1992.''

EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF UNION OF SOVIET SOCIALIST REPUBLICS

Pub. L. 102–197, Dec. 9, 1991, 105 Stat. 1622, provided: ''That the Congress approves the extension of nondiscriminatory treatment to the products of the Union of Soviet Socialist Republics transmitted by the President to the Congress on October 9, 1991.''

EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF CZECHOSLOVAKIA AND HUNGARY

Pub. L. 102–182, §§1, 2, Dec. 4, 1991, 105 Stat. 1233, provided that:

''SECTION 1. CONGRESSIONAL FINDINGS AND PREPARATORY PRESIDENTIAL ACTION.

''(a) CONGRESSIONAL FINDINGS.—The Congress finds that the Czech and Slovak Federal Republic and the Republic of Hungary both have—

''(1) dedicated themselves to respect for fundamental human rights;

''(2) accorded to their citizens the right to emigrate and to travel freely;

''(3) reversed over 40 years of communist dictatorship and embraced the establishment of political pluralism, free and fair elections, and multi-party political systems;

''(4) introduced far-reaching economic reforms based on market-oriented principles and have decentralized economic decisionmaking; and

''(5) demonstrated a strong desire to build friendly relationships with the United States.

''(b) PREPARATORY PRESIDENTIAL ACTION.—The Congress notes that the President in anticipation of the enactment of section 2, has directed the United States Trade Representative to negotiate with the Czech and Slovak Federal Republic and the Republic of Hungary, respectively, in order to—

''(1) preserve the commitments of that country under the bilateral commercial agreement in effect between that country and the United States that are consistent with the General Agreement on Tariffs and Trade; and

''(2) obtain other appropriate commitments.

''SEC. 2. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO CZECHOSLOVAKIA AND HUNGARY.

''(a) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

''(1) determine that such title should no longer apply to the Czech and Slovak Federal Republic or to the Republic of Hungary, or to both; and

''(2) after making a determination under paragraph (1) with respect to a country, proclaim the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of that country.

''(b) TERMINATION OF APPLICATION OF TITLE IV.—On and after the effective date of the extension under subsection (a)(2) of nondiscriminatory treatment to the products of a country [Nondiscriminatory treatment extended Apr. 14, 1992, see Proc. No. 6419, listed in the table of presidential documents below.], title IV of the Trade Act of 1974 shall cease to apply to that country.''

EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF ESTONIA, LATVIA, AND LITHUANIA

Pub. L. 102–182, title I, Dec. 4, 1991, 105 Stat. 1235, provided that:

''SEC. 101. CONGRESSIONAL FINDINGS.

''The Congress finds the following:

''(1) The Government of the United States extended full diplomatic recognition to Estonia, Latvia, and Lithuania in 1922.

''(2) The Government of the United States entered into agreements extending most-favored-nation treatment with the Government of Estonia on August 1, 1925, the Government of Latvia on April 30, 1926, and the Government of Lithuania on July 10, 1926.

''(3) The Union of Soviet Socialist Republics incorporated Estonia, Latvia, and Lithuania involuntarily into the Union as a result of a secret protocol to a German-Soviet agreement in 1939 which assigned those three states to the Soviet sphere of influence; and the Government of the United States has at no time recognized the forcible incorporation of those states into the Union of Soviet Socialist Republics.

''(4) The Trade Agreements Extension Act of 1951 [see Short Title of 1951 Amendment note set out under section 1654 of this title] required the President to suspend, withdraw, or prevent the application of trade benefits, including most-favored-nation treatment, to countries under the domination or control of the world Communist movement.

''(5) In 1951, responsible representatives of Estonia, Latvia, and Lithuania stated that they did not object to the imposition of 'such controls as the Government of the United States may consider to be appropriate' to the products of those countries, for such time as those countries remained under Soviet domination or control.

''(6) In 1990, the democratically elected governments of Estonia, Latvia, and Lithuania declared the restoration of their independence from the Union of Soviet Socialist Republics.

''(7) The Government of the United States established diplomatic relations with Estonia, Latvia, and Lithuania on September 2, 1991, and on September 6, 1991, the State Council of the transitional government of the Union of Soviet Socialist Republics recognized the independence of Estonia, Latvia, and Lithuania, thereby ending the involuntary incorporation of those countries into, and the domination of those countries by, the Soviet Union.

''(8) Immediate action should be taken to remove the impediments, imposed in response to the circumstances referred to in paragraph (5), in United States trade laws to the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of those countries.

''(9) As a consequence of establishment of United States diplomatic relations with Estonia, Latvia, and

Lithuania, these independent countries are eligible to receive the benefits of the Generalized System of Preferences provided for in title V of the Trade Act of 1974 [19 U.S.C. 2461 et seq.].

''SEC. 102. EXTENSION OF NONDISCRIMINATORY TREATMENT TO THE PRODUCTS OF ESTONIA, LATVIA, AND LITHUANIA.

''(a) IN GENERAL.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.) or any other provision of law, nondiscriminatory treatment (most-favored-nation treatment) applies to the products of Estonia, Latvia, and Lithuania.

''(b) CONFORMING TARIFF SCHEDULE AMENDMENTS.—General Note 3(b) of the Harmonized Tariff Schedule of the United States is amended by striking out 'Estonia', 'Latvia', and 'Lithuania'.

''(c) EFFECTIVE DATE.—Subsection (a) and the amendments made by subsection (b) apply with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act [Dec. 4, 1991].

''SEC. 103. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO THE BALTICS.

''Title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.) shall cease to apply to Estonia, Latvia, and Lithuania effective as of the 15th day after the date of the enactment of this Act [Dec. 4, 1991].

''SEC. 104. SENSE OF THE CONGRESS REGARDING PROMPT PROVISION OF GSP TREATMENT TO THE PRODUCTS OF ESTONIA, LATVIA, AND LITHUANIA.

''It is the sense of the Congress that the President should take prompt action under title V of the Trade Act of 1974 [19 U.S.C. 2461 et seq.] to provide preferential tariff treatment to the products of Estonia, Latvia, and Lithuania pursuant to the Generalized System of Preferences.''

EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF BULGARIA

Pub. L. 104–162, July 18, 1996, 110 Stat. 1414, provided that:

''SECTION 1. CONGRESSIONAL FINDINGS AND SUPPLEMENTAL ACTION.

''(a) CONGRESSIONAL FINDINGS.—The Congress finds that Bulgaria—

''(1) has received most-favored-nation treatment since 1991 and has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974 [19 U.S.C. 2431 et seq.] since 1993;

''(2) has reversed many years of Communist dictatorship and instituted a constitutional republic ruled by a democratically elected government as well as basic market-oriented reforms, including privatization;

''(3) is in the process of acceding to the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO), and extension of unconditional most-favored-nation treatment would enable the United States to avail itself of all rights under the GATT and the WTO with respect to Bulgaria; and

''(4) has demonstrated a strong desire to build friendly relationships and to cooperate fully with the United States on trade matters.

''(b) SUPPLEMENTAL ACTION.—The Congress notes that the United States Trade Representative intends to negotiate with Bulgaria in order to preserve the commitments of that country under the bilateral commercial agreement in effect between that country and the United States that are consistent with the GATT and the WTO.

''SEC. 2. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO BULGARIA.

''(a) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

''(1) determine that such title should no longer apply to Bulgaria; and

''(2) after making a determination under paragraph (1) with respect to Bulgaria, proclaim the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of that country.

''(b) TERMINATION OF APPLICATION OF TITLE IV.—On and after the effective date of the extension under subsection (a)(2) of nondiscriminatory treatment to the products of Bulgaria [Nondiscriminatory treatment extended Oct. 1, 1996, see Proc. No. 6922, listed in the table of presidential documents below.], title IV of the Trade Act of 1974 shall cease to apply to that country.''

Pub. L. 102–158, Nov. 13, 1991, 105 Stat. 1041, provided: ''That the Congress approves the extension of nondiscriminatory treatment to the products of the People's Republic of Bulgaria transmitted by the President to the Congress on June 25, 1991.''

EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF MONGOLIAN PEOPLE'S REPUBLIC

Pub. L. 102–157, Nov. 13, 1991, 105 Stat. 1040, provided: ''That the Congress approves the extension of nondiscriminatory treatment to the products of the Mongolian People's Republic transmitted by the President to the Congress on June 25, 1991.''

EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF CZECHOSLOVAKIA

Pub. L. 101–541, Nov. 8, 1990, 104 Stat. 2380, provided: ''That the Congress approves the extension of nondiscriminatory treatment with respect to the products of Czechoslovakia transmitted by the President to the Congress on September 6, 1990.''

AUTHORITY OF PRESIDENT TO DENY AND TO RESTORE NONDISCRIMINATORY TRADE TREATMENT TO PRODUCTS OF AFGHANISTAN OR TO DENY OR TO RESTORE CREDITS, ETC., TO AFGHANISTAN

Pub. L. 99–190, § 118, Dec. 19, 1985, 99 Stat. 1319, authorized President to deny nondiscriminatory (most-favored-nation) trade treatment to the products of Afghanistan and to deny credit, credit guarantees, and investment guarantees to, or for the benefit of, Afghanistan under any Federal program, directed President, if such treatment was not denied, to submit to Congress, 45 days after Dec. 19, 1985, a report with the reasons for not denying such treatment, and authorized President, if such treatment was denied to restore nondiscriminatory trade treatment, and to extend credit, credit guarantees, and investment guarantees. Similar provisions were contained in Pub. L. 99–190, § 101(i) [title V, § 552], Dec. 19, 1985, 99 Stat. 1291, 1314.

EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF SOCIALIST REPUBLIC OF ROMANIA

S. Con. Res. 35, July 28, 1975, 89 Stat. 1202, provided: ''That the Congress approves the extension of nondiscriminatory treatment with respect to the products of the Socialist Republic of Romania transmitted by the President to the Congress on April 25, 1975.''

PRESIDENTIAL DOCUMENTS RELATING TO EXTENSION OF NONDISCRIMINATORY TRADE TREATMENT

AFGHANISTAN.—Proc. No. 7553, May 3, 2002, 67 F.R. 30535.

Determination of the President of the United States, No. 93–3, Oct. 7, 1992, 57 F.R. 47557.

Proc. No. 5437, Jan. 31, 1986, 51 F.R. 4287.

ALBANIA.—Proc. No. 7326, June 29, 2000, 65 F.R. 41547.

Determination of the President of the United States, No. 96–44, Aug. 27, 1996, 61 F.R. 45859.

Proc. No. 6445, June 15, 1992, 57 F.R. 26921.

Determination of the President of the United States, No. 92–33, June 15, 1992, 57 F.R. 28583.

ARMENIA.—Proc. No. 7860, Jan. 7, 2005, 70 F.R. 2321.

Determination of the President of the United States, No. 96–47, Aug. 27, 1996, 61 F.R. 45865.

BELARUS.—Determination of the President of the United States, No. 96–15, Mar. 7, 1996, 61 F.R. 49935.
BULGARIA.—Proc. No. 6922, Sept. 27, 1996, 61 F.R. 51205.
Proc. No. 6307, June 24, 1991, 56 F.R. 29787.
Determination of the President of the United States, No. 91–43, June 24, 1991, 56 F.R. 31037.
CHINA.—Proc. No. 7516, Dec. 27, 2001, 67 F.R. 479.
Determination of the President of the United States, No. 98–13, Jan. 30, 1998, 63 F.R. 5857.
Determination of the President of the United States, No. 96–33, June 21, 1996, 61 F.R. 32631.
Determination of the President of the United States, No. 92–12, Jan. 31, 1992, 57 F.R. 19077.
Memorandum of the President of the United States, Dec. 19, 1988, 53 F.R. 51217.
Memorandum of the President of the United States, Dec. 23, 1982, 47 F.R. 57653.
Proc. No. 4697, Oct. 23, 1979, 44 F.R. 61161.
CZECHOSLOVAKIA.—Proc. No. 6419, Apr. 10, 1992, 57 F.R. 12865.
Determination of the President of the United States, No. 92–21, Apr. 10, 1992, 57 F.R. 12863.
Proc. No. 6175, Sept. 6, 1990, 55 F.R. 37643.
Memorandum of the President of the United States, Sept. 6, 1990, 55 F.R. 39259.
GEORGIA.—Proc. No. 7389, Dec. 29, 2000, 66 F.R. 703.
Determination of the President of the United States, No. 96–49, Aug. 27, 1996, 61 F.R. 45869.
HUNGARY.—Proc. No. 6419, Apr. 10, 1992, 57 F.R. 12865.
Determination of the President of the United States, No. 92–21, Apr. 10, 1992, 57 F.R. 12863.
Determination of the President of the United States, No. 90–27, June 22, 1990, 55 F.R. 25945.
Determination of the President of the United States, No. 87–15, June 23, 1987, 52 F.R. 23785.
Determination of the President of the United States, No. 84–10, May 31, 1984, 49 F.R. 23025.
Determination of the President of the United States, No. 81–9, June 2, 1981, 46 F.R. 29921.
Proc. No. 4560, Apr. 7, 1978, 43 F.R. 15125.
KAZAKHSTAN.—Determination of the President of the United States, No. 96–16, Mar. 7, 1996, 61 F.R. 49937.
KYRGYZSTAN.—Proc. No. 7326, June 29, 2000, 65 F.R. 41547.
Determination of the President of the United States, No. 96–45, Aug. 27, 1996, 61 F.R. 45861.
MOLDOVA.—Determination of the President of the United States, No. 96–48, Aug. 27, 1996, 61 F.R. 45867.
MONGOLIA.—Proc. No. 7207, July 1, 1999, 64 F.R. 36549.
Proc. No. 6308, June 24, 1991, 56 F.R. 29834.
Determination of the President of the United States, No. 91–44, June 24, 1991, 56 F.R. 31039.
ROMANIA.—Proc. No. 6951, Nov. 7, 1996, 61 F.R. 58129.
Proc. No. 6577, July 2, 1993, 58 F.R. 36301.
Determination of the President of the United States, No. 93–30, July 2, 1993, 58 F.R. 43785.
Proc. No. 6449, June 22, 1992, 57 F.R. 28033.
Determination of the President of the United States, No. 92–34, June 22, 1992, 57 F.R. 30099.
Determination of the President of the United States, No. 90–28, July 3, 1990, 55 F.R. 27797.
Determination of the President of the United States, No. 87–16, June 24, 1987, 52 F.R. 23931.
Determination of the President of the United States, No. 87–15, June 23, 1987, 52 F.R. 23785.
Determination of the President of the United States, No. 84–10, May 31, 1984, 49 F.R. 23025.
Determination of the President of the United States, No. 81–9, June 2, 1981, 46 F.R. 29921.
Proc. No. 4369, Apr. 24, 1975, 40 F.R. 18389.
TAJIKISTAN.—Determination of the President of the United States, No. 97–7, Nov. 26, 1996, 61 F.R. 63695.
TURKMENISTAN.—Determination of the President of the United States, No. 97–5, Nov. 20, 1996, 61 F.R. 59303.
UKRAINE.—Proc. No. 7995, Mar. 31, 2006, 71 F.R. 16969.
Determination of the President of the United States, No. 96–46, Aug. 27, 1996, 61 F.R. 45863.
UNION OF SOVIET SOCIALIST REPUBLICS.—Proc. No. 6352, Oct. 9, 1991, 56 F.R. 51317.
Proc. No. 6320, Aug. 2, 1991, 56 F.R. 37407.
Determination of the President of the United States, No. 91–47, Aug. 2, 1991, 56 F.R. 40741.
UZBEKISTAN.—Determination of the President of the United States, No. 97–6, Nov. 26, 1996, 61 F.R. 63693.
VIETNAM.—Proc. No. 8096, Dec. 29, 2006, 72 F.R. 451.
Determination of the President of the United States, No. 2005–11, Dec. 10, 2004, 69 F.R. 76587.
Proc. No. 7449, June 8, 2001, 66 F.R. 31375.
Determination of the President of the United States, No. 2001–18, June 8, 2001, 66 F.R. 34353.

§ 2435. Commercial agreements

(a) Presidential authority

Subject to the provisions of subsections (b) and (c) of this section, the President may authorize the entry into force of bilateral commercial agreements providing nondiscriminatory treatment to the products of countries heretofore denied such treatment whenever he determines that such agreements with such countries will promote the purposes of this chapter and are in the national interest.

(b) Terms of agreements

Any such bilateral commercial agreement shall—

(1) be limited to an initial period specified in the agreement which shall be no more than 3 years from the date the agreement enters into force; except that it may be renewable for additional periods, each not to exceed 3 years; if—

(A) a satisfactory balance of concessions in trade and services has been maintained during the life of such agreement, and

(B) the President determines that actual or foreseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations are satisfactorily reciprocated by the other party to the bilateral agreement;

(2) provide that it is subject to suspension or termination at any time for national security reasons, or that the other provisions of such agreement shall not limit the rights of any party to take any action for the protection of its security interests;

(3) include safeguard arrangements (A) providing for prompt consultations whenever either actual or prospective imports cause or threaten to cause, or significantly contribute to, market disruption and (B) authorizing the imposition of such import restrictions as may be appropriate to prevent such market disruption;

(4) if the other party to the bilateral agreement is not a party to the Paris Convention for the Protection of Industrial Property, provide rights for United States nationals with respect to patents and trademarks in such country not less than the rights specified in such convention;

(5) if the other party to the bilateral agreement is not a party to the Universal Copyright Convention, provide rights for United States nationals with respect to copyrights in such country not less than the rights specified in such convention;

(6) in the case of an agreement entered into or renewed after January 3, 1975, provide arrangements for the protection of industrial rights and processes;

(7) provide arrangements for the settlement of commercial differences and disputes;

(8) in the case of an agreement entered into or renewed after January 3, 1975, provide arrangements for the promotion of trade, which may include arrangements for the establishment or expansion of trade and tourist promotion offices, for facilitation of activities of governmental commercial officers, participation in trade fairs and exhibits, and the sending of trade missions, and for facilitation of entry, establishment, and travel of commercial representatives;

(9) provide for consultations for the purpose of reviewing the operation of the agreement and relevant aspects of relations between the United States and the other party; and

(10) provide such other arrangements of a commercial nature as will promote the purposes of this chapter.

(c) Congressional action

An agreement referred to in subsection (a) of this section, and a proclamation referred to in section 2434(a) of this title implementing such agreement, shall take effect only if a joint resolution described in section 2191(b)(3) of this title that approves of the agreement referred to in subsection (a) of this section is enacted into law.

(Pub. L. 93–618, title IV, § 405, Jan. 3, 1975, 88 Stat. 2061; Pub. L. 96–39, title XI, § 1106(f)(3), July 26, 1979, 93 Stat. 312; Pub. L. 101–382, title I, § 132(b)(1), Aug. 20, 1990, 104 Stat. 645.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(10), was in the original ''this Act'', meaning Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–382 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''An agreement referred to in subsection (a) of this section, and a proclamation referred to in section 2434(a) of this title implementing such agreement, shall take effect only if (1) approved by the Congress by the adoption of a concurrent resolution referred to in section 2191 of this title, or (2) in the case of an agreement entered into before January 3, 1975, and a proclamation implementing such agreement, a resolution of disapproval referred to in section 2192 of this title is not adopted during the 90-day period specified by section 2437(c)(2) of this title.''

1979—Subsec. (b)(8). Pub. L. 96–39 substituted ''may include arrangements'' for ''may include those''.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective July 26, 1979, see section 1114 of Pub. L. 96–39, set out as an Effective Date note under section 2581 of this title.

§ 2436. Market disruption

(a) Investigation by International Trade Commission; report; publication

(1) Upon the filing of a petition by an entity described in section 2252(a) of this title, upon request of the President or the United States Trade Representative, upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the International Trade Commission (hereafter in this section referred to as the ''Commission'') shall promptly make an investigation to determine, with respect to imports of an article which is the product of a Communist country, whether market disruption exists with respect to an article produced by a domestic industry.

(2) The provisions of subsections (a)(3), (b)(4),[1] and (c)(4) of section 2252 of this title shall apply with respect to investigations by the Commission under paragraph (1).

(3) The Commission shall report to the President its determination with respect to each investigation under paragraph (1) and the basis therefor and shall include in each report any dissenting or separate views. If the Commission finds, as a result of its investigation, that market disruption exists with respect to an article produced by a domestic industry, it shall find the amount of the increase in, or imposition of, any duty or other import restriction on such article which is necessary to prevent or remedy such market disruption and shall include such finding in its report to the President. The Commission shall furnish to the President a transcript of the hearings and any briefs which may have been submitted in connection with each investigation.

(4) The report of the Commission of its determination with respect to an investigation under paragraph (1) shall be made at the earliest practicable time, but not later than 3 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the President, the Commission shall also promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(b) Affirmative determination

With respect to any affirmative determination of the Commission under subsection (a) of this section—

(1) such determination shall be treated as an affirmative determination made under section 2251(b) of this title (as in effect on the day before the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988); and

(2) sections 2252 and 2253 of this title (as in effect on the day before the date of the enactment of such Act of 1988), rather than the provisions of part 1 of subchapter II of this chapter as amended by section 1401 of such Act of 1988, shall apply with respect to the taking of subsequent action, if any, by the President in response to such affirmative determination;

except that—

(A) the President may take action under such sections 2252 and 2253 of this title only with respect to imports from the country or countries involved of the article with respect to which the affirmative determination was made; and

(B) if such action consists of, or includes, an orderly marketing agreement, such agreement

[1] See References in Text note below.

shall be entered into within 60 days after the import relief determination date.

(c) Products of Communist countries

If, at any time, the President finds that there are reasonable grounds to believe, with respect to imports of an article which is the product of a Communist country, that market disruption exists with respect to an article produced by a domestic industry, he shall request the Commission to initiate an investigation under subsection (a) of this section. If the President further finds that emergency action is necessary, he may take action under sections 2252 and 2253 of this title referred to in subsection (b) of this section as if an affirmative determination of the Commission had been made under subsection (a) of this section. Any action taken by the President under the preceding sentence shall cease to apply (1) if a negative determination is made by the Commission under subsection (a) of this section with respect to imports of such article, on the day on which the Commission's report of such determination is submitted to the President, or (2) if an affirmative determination is made by the Commission under subsection (a) of this section with respect to imports of such article, on the day on which the action taken by the President pursuant to such determination becomes effective.

(d) Petitions to initiate consultations as provided for by safeguard arrangements

(1) A petition may be filed with the President by an entity described in section 2251(a)(1) of this title requesting the President to initiate consultations provided for by the safeguard arrangements of any agreement entered into under section 2435 of this title with respect to imports of an article which is the product of the country which is the other party to such agreement.

(2) If the President determines that there are reasonable grounds to believe, with respect to imports of such article, that market disruption exists with respect to an article produced by a domestic industry, he shall initiate consultations with such country with respect to such imports.

(e) Definitions; factors determining existence of market disruption

For purposes of this section—

(1) The term ''Communist country'' means any country dominated or controlled by communism.

(2)(A) Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

(B) For purposes of subparagraph (A):

(i) Imports of an article shall be considered to be increasing rapidly if there has been a significant increase in such imports (either actual or relative to domestic production) during a recent period of time.

(ii) The term ''significant cause'' refers to a cause which contributes significantly to the material injury of the domestic industry, but need not be equal to or greater than any other cause.

(C) The Commission, in determining whether market disruption exists, shall consider, among other factors—

(i) the volume of imports of the merchandise which is the subject of the investigation;

(ii) the effect of imports of the merchandise on prices in the United States for like or directly competitive articles;

(iii) the impact of imports of such merchandise on domestic producers of like or directly competitive articles; and

(iv) evidence of disruptive pricing practices, or other efforts to unfairly manage trade patterns.

(Pub. L. 93–618, title IV, §406, Jan. 3, 1975, 88 Stat. 2062; 1979 Reorg. Plan No. 3, §1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381; Pub. L. 100–418, title I, §1411(a), (b), Aug. 23, 1988, 102 Stat. 1241, 1242; Pub. L. 106–36, title I, §1001(a)(6), June 25, 1999, 113 Stat. 130.)

REFERENCES IN TEXT

Subsection (b)(4) of section 2252 of this title, referred to in subsec. (a)(2), was repealed by Pub. L. 103–465, title III, §301(c), Dec. 8, 1994, 108 Stat. 4932. See section 2252(b)(3) of this title.

The date of the enactment of the Omnibus Trade and Competitiveness Act of 1988, referred to in subsec. (b), is the date of enactment of Pub. L. 100–418, which was approved Aug. 23, 1988.

Section 1401 of such Act of 1988, referred to in subsec. (b)(2), is section 1401 of Pub. L. 100–418, known as the Omnibus Trade and Competitiveness Act of 1988, which enacted section 2254 of this title, amended sections 1330, 2133, 2251 to 2253, 2274, 2354, and 2703 of this title, enacted a provision set out as a note under section 2251 of this title, and amended a provision set out as a note under section 2112 of this title.

AMENDMENTS

1999—Subsec. (e)(2)(B), (C). Pub. L. 106–36 realigned margins.

1988—Subsec. (a)(1). Pub. L. 100–418, §1411(b)(1), substituted ''section 2252(a)'' for ''section 2251(a)(1)''.

Subsec. (a)(2). Pub. L. 100–418, §1411(b)(2), substituted ''subsections (a)(3), (b)(4), and (c)(4) of section 2252'' for ''subsections (a)(2), (b)(3), and (c) of section 2251''.

Subsec. (b). Pub. L. 100–418, §1411(a)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''For purposes of sections 2252 and 2253 of this title, an affirmative determination of the Commission under subsection (a) of this section shall be treated as an affirmative determination under section 2251(b) of this title, except that—

''(1) the President may take action under sections 2252 and 2253 of this title only with respect to imports from the country or countries involved of the article with respect to which the affirmative determination was made, and

''(2) if such action consists of, or includes, an orderly marketing agreement, such agreement shall be entered into within 60 days after the import relief determination date.''

Subsec. (c). Pub. L. 100–418, §1411(a)(2), inserted ''referred to in subsection (b) of this section'' after ''sections 2252 and 2253 of this title''.

Subsec. (e)(2). Pub. L. 100–418, §1411(a)(3), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

CHANGE OF NAME

''United States Trade Representative'' substituted for ''Special Representative for Trade Negotiations'' in

subsec. (a)(1), pursuant to Reorg. Plan No. 3 of 1979, §1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1–107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title. See, also, section 2171 of this title as amended by Pub. L. 97–456.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1411(c) of Pub. L. 100–418 provided that: ''The amendments made by subsections (a) and (b) [amending this section] apply with respect to investigations initiated under section 406(a) of the Trade Act of 1974 [19 U.S.C. 2436(a)] on or after the date of the enactment of this Act [Aug. 23, 1988].''

§ 2437. Procedure for Congressional approval or disapproval of extension of nondiscriminatory treatment and Presidential reports

(a) Transmission of nondiscriminatory treatment documents to Congress

Whenever the President issues a proclamation under section 2434 of this title extending nondiscriminatory treatment to the products of any foreign country, he shall promptly transmit to the House of Representatives and to the Senate a document setting forth the proclamation and the agreement the proclamation proposes to implement, together with his reasons therefor.

(b) Transmission of freedom of emigration documents to Congress

The President shall transmit to the House of Representatives and the Senate a document containing the initial report submitted by him under section 2432(b) or 2439(b) of this title with respect to a nonmarket economy country. On or before December 31 of each year, the President shall transmit to the House of Representatives and the Senate, a document containing the report required by section 2432(b) or 2439(b) of this title as the case may be, to be submitted on or before such December 31.

(c) Effective date of proclamations and agreements; disapproval of reports

(1) In the case of a document referred to in subsection (a) of this section, the proclamation set forth in the document may become effective and the agreement set forth in the document may enter into force and effect only if a joint resolution described in section 2191(b)(3) of this title that approves of the extension of nondiscriminatory treatment to the products of the country concerned is enacted into law.

(2) In the case of a document referred to in subsection (b) of this section which contains a report submitted by the President under section 2432(b) or 2439(b) of this title with respect to a nonmarket economy country, if, before the close of the 90-day period beginning on the day on which such document is delivered to the House of Representatives and to the Senate, a joint resolution described in section 2192(a)(1)(B) of this title is enacted into law that disapproves of the report submitted by the President with respect to such country, then, beginning with the day after the end of the 60-day period beginning with the date of the enactment of such resolution of disapproval, (A) nondiscriminatory treatment shall not be in force with respect to the products of such country, and the products of such country shall be dutiable at the rates set forth in rate column numbered 2 of the Harmonized Tariff Schedule of the United States, (B) such country may not participate in any program of the Government of the United States which extends credit or credit guarantees or investment guarantees, and (C) no commercial agreement may thereafter be concluded with such country under this subchapter. If the President vetoes the joint resolution, the joint resolution shall be treated as enacted into law before the end of the 90-day period under this paragraph if both Houses of Congress vote to override such veto on or before the later of the last day of such 90-day period or the last day of the 15-day period (excluding any day described in section 2194(b) of this title) beginning on the date the Congress receives the veto message from the President.

(Pub. L. 93–618, title IV, §407, Jan. 3, 1975, 88 Stat. 2063; Pub. L. 100–418, title I, §1214(j)(4), Aug. 23, 1988, 102 Stat. 1158; Pub. L. 101–382, title I, §132(b)(3), (c)(1), Aug. 20, 1990, 104 Stat. 646.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (c)(2), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

AMENDMENTS

1990—Subsec. (c)(1). Pub. L. 101–382, §132(b)(3)(A), added par. (1) and struck out former par. (1) which read as follows: ''In the case of a document referred to in subsection (a) of this section (other than a document to which paragraph (2) applies), the proclamation set forth therein may become effective and the agreement set forth therein may enter into force and effect only if the House of Representatives and the Senate adopt, by an affirmative vote of a majority of those present and voting in each House, a concurrent resolution of approval (under the procedures set forth in section 2191 of this title) of the extension of nondiscriminatory treatment to the products of the country concerned.''

Subsec. (c)(2). Pub. L. 101–382 struck out par. (2) and redesignated par. (3) as (2), and substituted ''a joint resolution described in section 2192(a)(1)(B) of this title is enacted into law that disapproves'' for ''either the House of Representatives or the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval (under the procedures set forth in section 2192 of this title)'' and ''the end of the 60-day period beginning with the date of the enactment'' for ''the date of the adoption'' and inserted at end ''If the President vetoes the joint resolution, the joint resolution shall be treated as enacted into law before the end of the 90-day period under this paragraph if both Houses of Congress vote to override such veto on or before the later of the last day of such 90-day period or the last day of the 15-day period (excluding any day described in section 2194(b) of this title) beginning on the date the Congress receives the veto message from the President.'' Former par. (2) related to effective date of proclamation extending nondiscriminatory treatment to products of a foreign country and of agreement proclamation proposed to implement and related to resolution of disapproval of such extension as to certain countries.

Subsec. (c)(3). Pub. L. 101–382, §132(b)(3)(B), redesignated par. (3) as (2).

1988—Subsec. (c)(3). Pub. L. 100–418 substituted ''Harmonized Tariff Schedule of the United States'' for ''Tariff Schedules of the United States''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or

after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.

§ 2438. Payment by Czechoslovakia of amounts owed United States citizens and nationals

(a) Renegotiation of 1974 agreement

The arrangement initialed on July 5, 1974, with respect to the settlement of the claims of citizens and nationals of the United States against the Government of Czechoslovakia shall be renegotiated and shall be submitted to the Congress as part of any agreement entered into under this subchapter with Czechoslovakia.

(b) Provisional retention of gold

The United States shall not release any gold belonging to Czechoslovakia and controlled directly or indirectly by the United States pursuant to the provisions of the Paris Reparations Agreement of January 24, 1946, or otherwise, until such agreement has been approved by the Congress.

(Pub. L. 93–618, title IV, § 408, Jan. 3, 1975, 88 Stat. 2064.)

§ 2439. Freedom to emigrate to join a very close relative in United States

(a) Sanctions for emigration restrictions

To assure the continued dedication of the United States to the fundamental human rights and welfare of its own citizens, and notwithstanding any other provision of law, on or after January 3, 1975, no nonmarket economy country shall participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, and the President of the United States shall not conclude any commercial agreement with any such country, during the period beginning with the date on which the President determines that such country—

(1) denies its citizens the right or opportunity to join permanently through emigration, a very close relative in the United State,[1] such as a spouse, parent, child, brother, or sister;

(2) imposes more than a nominal tax on the visas or other documents required for emigration described in paragraph (1); or

(3) imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate as described in paragraph (1),

and ending on the date on which the President determines that such country is no longer in violation of paragraph (1), (2), or (3).

(b) Report to Congress concerning emigration policies

After January 3, 1975, (A) a nonmarket economy country may participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and (B) the President may conclude a commercial agreement with such country, only after the President has submitted to the Congress a report indicating that such country is not in violation of paragraph (1), (2), or (3) of subsection (a) of this section. Such report with respect to such country shall include information as to the nature and implementation of its laws and policies and restrictions or discrimination applied to or against persons wishing to emigrate to the United States to join close relatives. The report required by this subsection shall be submitted initially as provided herein and, with current information, on or before each June 30 and December 31 thereafter, so long as such credits or guarantees are extended or such agreement is in effect.

(c) Exemption from application of section

This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on January 3, 1975.

(d) Additional exemption from application of section

During any period that a waiver is in effect with respect to any nonmarket economy country under section 2432(c) of this title, the provisions of subsections (a) and (b) of this section shall not apply with respect to such country.

(Pub. L. 93–618, title IV, § 409, Jan. 3, 1975, 88 Stat. 2064.)

REFERENCES IN TEXT

The Tariff Schedules of the United States, referred to in subsec. (c), to be treated as a reference to the Harmonized Tariff Schedule, pursuant to section 3012 of this title. The Harmonized Tariff Schedule is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

DELEGATION OF FUNCTIONS

For delegation of congressional reporting functions of President under subsec. (b) of this section, see section 1 of Ex. Ord. No. 13313, July 31, 2003, 68 F.R. 46073, set out as a note under section 301 of Title 3, The President.

§ 2440. Repealed. Pub. L. 104–295, § 17, Oct. 11, 1996, 110 Stat. 3524

Section, Pub. L. 93–618, title IV, § 410, Jan. 3, 1975, 88 Stat. 2065, related to establishment and maintenance of East-West Trade Statistics Monitoring System.

§ 2441. Repealed. Pub. L. 105–362, title XIV, § 1401(b)(2), Nov. 10, 1998, 112 Stat. 3294; Pub. L. 106–36, title I, § 1001(a)(4), June 25, 1999, 113 Stat. 130

Section, Pub. L. 93–618, title IV, § 411, Jan. 3, 1975, 88 Stat. 2065, related to East-West Foreign Trade Board.

PART 2—RELIEF FROM MARKET DISRUPTION TO INDUSTRIES AND DIVERSION OF TRADE TO THE UNITED STATES MARKET

TERMINATION OF PART

For termination of this part effective 12 years after Dec. 11, 2001, see section 2451b(c) of this title.

§ 2451. Action to address market disruption

(a) Presidential action

If a product of the People's Republic of China is being imported into the United States in such

[1] So in original.

increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of a like or directly competitive product, the President shall, in accordance with the provisions of this section, proclaim increased duties or other import restrictions with respect to such product, to the extent and for such period as the President considers necessary to prevent or remedy the market disruption.

(b) Initiation of an investigation

(1) Upon the filing of a petition by an entity described in section 2252(a) of this title, upon the request of the President or the United States Trade Representative (in this part referred to as the ''Trade Representative''), upon resolution of either the Committee on Ways and Means of the House of Representatives, or the Committee on Finance of the Senate (in this part referred to as the ''Committees'') or on its own motion, the United States International Trade Commission (in this part referred to as the ''Commission'') shall promptly make an investigation to determine whether products of the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

(2) The limitations on investigations set forth in section 2252(h)(1) of this title shall apply to investigations conducted under this section.

(3) The provisions of subsections (a)(8) and (i) of section 2252 of this title, relating to treatment of confidential business information, shall apply to investigations conducted under this section.

(4) Whenever a petition is filed, or a request or resolution is received, under this subsection, the Commission shall transmit a copy thereof to the President, the Trade Representative, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, except that in the case of confidential business information, the copy may include only nonconfidential summaries of such information.

(5) The Commission shall publish notice of the commencement of any proceeding under this subsection in the Federal Register and shall, within a reasonable time thereafter, hold public hearings at which the Commission shall afford interested parties an opportunity to be present, to present evidence, to respond to the presentations of other parties, and otherwise to be heard.

(c) Market disruption

(1) For purposes of this section, market disruption exists whenever imports of an article like or directly competitive with an article produced by a domestic industry are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry.

(2) For purposes of paragraph (1), the term ''significant cause'' refers to a cause which contributes significantly to the material injury of the domestic industry, but need not be equal to or greater than any other cause.

(d) Factors in determination

In determining whether market disruption exists, the Commission shall consider objective factors, including—

(1) the volume of imports of the product which is the subject of the investigation;

(2) the effect of imports of such product on prices in the United States for like or directly competitive articles; and

(3) the effect of imports of such product on the domestic industry producing like or directly competitive articles.

The presence or absence of any factor under paragraph (1), (2), or (3) is not necessarily dispositive of whether market disruption exists.

(e) Time for Commission determinations

The Commission shall make and transmit to the President and the Trade Representative its determination under subsection (b)(1) of this section at the earliest practicable time, but in no case later than 60 days (or 90 days in the case of a petition requesting relief under subsection (i) of this section) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, under subsection (b) of this section. If the Commissioners voting are equally divided with respect to its determination, then the determination agreed upon by either group of Commissioners may be considered by the President and the Trade Representative as the determination of the Commission.

(f) Recommendations of Commission on proposed remedies

If the Commission makes an affirmative determination under subsection (b) of this section, or a determination which the President or the Trade Representative may consider as affirmative under subsection (e) of this section, the Commission shall propose the amount of increase in, or imposition of, any duty or other import restrictions necessary to prevent or remedy the market disruption. Only those members of the Commission who agreed to the affirmative determination under subsection (b) of this section are eligible to vote on the proposed action to prevent or remedy market disruption. Members of the Commission who did not agree to the affirmative determination may submit, in the report required under subsection (g) of this section, separate views regarding what action, if any, should be taken to prevent or remedy market disruption.

(g) Report by Commission

(1) Not later than 20 days after a determination under subsection (b) of this section is made, the Commission shall submit a report to the President and the Trade Representative.

(2) The Commission shall include in the report required under paragraph (1) the following:

(A) The determination made under subsection (b) of this section and an explanation of the basis for the determination.

(B) If the determination under subsection (b) of this section is affirmative, or may be considered by the President or the Trade Representative as affirmative under subsection (e) of this section, the recommendations of the

Commission on proposed remedies under subsection (f) of this section and an explanation of the basis for each recommendation.

(C) Any dissenting or separate views by members of the Commission regarding the determination and any recommendation referred to in subparagraphs (A) and (B).

(D) A description of—

(i) the short- and long-term effects that implementation of the action recommended under subsection (f) of this section is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers; and

(ii) the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers, and the communities where production facilities of such industry are located, and on other domestic industries.

(3) The Commission, after submitting a report to the President under paragraph (1), shall promptly make it available to the public (but shall not include confidential business information) and cause a summary thereof to be published in the Federal Register.

(h) Opportunity to present views and evidence on proposed measure and recommendation to the President

(1) Within 20 days after receipt of the Commission's report under subsection (g) of this section (or 15 days in the case of an affirmative preliminary determination under subsection (i)(1)(B) of this section), the Trade Representative shall publish in the Federal Register notice of any measure proposed by the Trade Representative to be taken pursuant to subsection (a) of this section and of the opportunity, including a public hearing, if requested, for importers, exporters, and other interested parties to submit their views and evidence on the appropriateness of the proposed measure and whether it would be in the public interest.

(2) Within 55 days after receipt of the report under subsection (g) of this section (or 35 days in the case of an affirmative preliminary determination under subsection (i)(1)(B) of this section), the Trade Representative, taking into account the views and evidence received under paragraph (1) on the measure proposed by the Trade Representative, shall make a recommendation to the President concerning what action, if any, to take to prevent or remedy the market disruption.

(i) Critical circumstances

(1) When a petition filed under subsection (b) of this section alleges that critical circumstances exist and requests that provisional relief be provided under this subsection with respect to the product identified in the petition, the Commission shall, not later than 45 days after the petition containing the request is filed—

(A) determine whether delay in taking action under this section would cause damage to the relevant domestic industry which would be difficult to repair; and

(B) if the determination under subparagraph (A) is affirmative, make a preliminary determination of whether imports of the product which is the subject of the investigation have caused or threatened to cause market disruption.

If the Commissioners voting are equally divided with respect to either of its determinations, then the determination agreed upon by either group of Commissioners may be considered by the President and the Trade Representative as the determination of the Commission.

(2) On the date on which the Commission completes its determinations under paragraph (1), the Commission shall transmit a report on the determinations to the President and the Trade Representative, including the reasons for its determinations. If the determinations under paragraph (1) are affirmative, or may be considered by the President or the Trade Representative as affirmative under paragraph (1), the Commission shall include in its report its recommendations on proposed provisional measures to be taken to prevent or remedy the market disruption. Only those members of the Commission who agreed to the affirmative determinations under paragraph (1) are eligible to vote on the proposed provisional measures to prevent or remedy market disruption. Members of the Commission who did not agree to the affirmative determinations may submit, in the report, dissenting or separate views regarding the determination and any recommendation of provisional measures referred to in this paragraph.

(3) If the determinations under paragraph (1) are affirmative, or may be considered by the President or the Trade Representative as affirmative under paragraph (1), the Trade Representative shall, within 10 days after receipt of the Commission's report, determine the amount or extent of provisional relief that is necessary to prevent or remedy the market disruption and shall provide a recommendation to the President on what provisional measures, if any, to take.

(4)(A) The President shall determine whether to provide provisional relief and proclaim such relief, if any, within 10 days after receipt of the recommendation from the Trade Representative.

(B) Such relief may take the form of—

(i) the imposition of or increase in any duty;

(ii) any modification, or imposition of any quantitative restriction on the importation of an article into the United States; or

(iii) any combination of actions under clauses (i) and (ii).

(C) Any provisional action proclaimed by the President pursuant to a determination of critical circumstances shall remain in effect not more than 200 days.

(D) Provisional relief shall cease to apply upon the effective date of relief proclaimed under subsection (a) of this section, upon a decision by the President not to provide such relief, or upon a negative determination by the Commission under subsection (b) of this section.

(j) Agreements with the People's Republic of China

(1) The Trade Representative is authorized to enter into agreements for the People's Republic of China to take such action as necessary to prevent or remedy market disruption, and should

seek to conclude such agreements before the expiration of the 60-day consultation period provided for under the product-specific safeguard provision of the Protocol of Accession of the People's Republic of China to the WTO, which shall commence not later than 5 days after the Trade Representative receives an affirmative determination provided for in subsection (e) of this section or a determination which the Trade Representative considers to be an affirmative determination pursuant to subsection (e) of this section.

(2) If no agreement is reached with the People's Republic of China pursuant to consultations under paragraph (1), or if the President determines than[1] an agreement reached pursuant to such consultations is not preventing or remedying the market disruption at issue, the President shall provide import relief in accordance with subsection (a) of this section.

(k) Standard for Presidential action

(1) Within 15 days after receipt of a recommendation from the Trade Representative under subsection (h) of this section on the appropriate action, if any, to take to prevent or remedy the market disruption, the President shall provide import relief for such industry pursuant to subsection (a) of this section, unless the President determines that provision of such relief is not in the national economic interest of the United States or, in extraordinary cases, that the taking of action pursuant to subsection (a) of this section would cause serious harm to the national security of the United States.

(2) The President may determine under paragraph (1) that providing import relief is not in the national economic interest of the United States only if the President finds that the taking of such action would have an adverse impact on the United States economy clearly greater than the benefits of such action.

***(l)* Publication of decision and reports**

(1) The President's decision, including the reasons therefor and the scope and duration of any action taken, shall be published in the Federal Register.

(2) The Commission shall promptly make public any report transmitted under this section, but shall not make public any information which the Commission determines to be confidential, and shall publish notice of such report in the Federal Register.

(m) Effective date of relief

Import relief under this section shall take effect not later than 15 days after the President's determination to provide such relief.

(n) Modifications of relief

(1) At any time after the end of the 6-month period beginning on the date on which relief under subsection (m) of this section first takes effect, the President may request that the Commission provide a report on the probable effect of the modification, reduction, or termination of the relief provided on the relevant industry. The Commission shall transmit such report to the President within 60 days of the request.

(2) The President may, after receiving a report from the Commission under paragraph (1), take such action to modify, reduce, or terminate relief that the President determines is necessary to continue to prevent or remedy the market disruption at issue.

(3) Upon the granting of relief under subsection (k) of this section, the Commission shall collect such data as is necessary to allow it to respond rapidly to a request by the President under paragraph (1).

***(o)* Extension of action**

(1) Upon request of the President, or upon petition on behalf of the industry concerned filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any relief provided under subsection (k) of this section is to terminate, the Commission shall investigate to determine whether action under this section continues to be necessary to prevent or remedy market disruption.

(2) The Commission shall publish notice of the commencement of any proceeding under this subsection in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

(3) The Commission shall transmit to the President a report on its investigation and determination under this subsection not later than 60 days before the action under subsection (m) of this section is to terminate.

(4) The President, after receiving an affirmative determination from the Commission under paragraph (3), may extend the effective period of any action under this section if the President determines that the action continues to be necessary to prevent or remedy the market disruption.

(Pub. L. 93–618, title IV, § 421, as added Pub. L. 106–286, div. A, title I, § 103(a)(3), Oct. 10, 2000, 114 Stat. 882; amended Pub. L. 108–429, title II, § 2004(d)(3), Dec. 3, 2004, 118 Stat. 2592.)

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108–429 made technical amendment to references in original act which appear in text as references to ''this part''.

§ 2451a. Action in response to trade diversion

(a) Monitoring by Customs Service

In any case in which a WTO member other than the United States requests consultations with the People's Republic of China under the product-specific safeguard provision of the Protocol of Accession of the People's Republic of China to the World Trade Organization, the Trade Representative shall inform the United States Customs Service, which shall monitor imports into the United States of those products of Chinese origin that are the subject of the consultation request. Data from such monitoring shall promptly be made available to the Commission upon request by the Commission.

(b) Initiation of investigation

(1) Upon the filing of a petition by an entity described in section 2252(a) of this title, upon

[1] So in original. Probably should be ''that''.

the request of the President or the Trade Representative, upon resolution of either of the Committees, or on its own motion, the Commission shall promptly make an investigation to determine whether an action described in subsection (c) of this section has caused, or threatens to cause, a significant diversion of trade into the domestic market of the United States.

(2) The Commission shall publish notice of the commencement of any proceeding under this subsection in the Federal Register and shall, within a reasonable time thereafter, hold public hearings at which the Commission shall afford interested parties an opportunity to be present, to present evidence, to respond to the presentations of other parties, and otherwise to be heard.

(3) The provisions of subsections (a)(8) and (i) of section 2252 of this title, relating to treatment of confidential business information, shall apply to investigations conducted under this section.

(c) Actions described

An action is described in this subsection if it is an action—

(1) by the People's Republic of China to prevent or remedy market disruption in a WTO member other than the United States;

(2) by a WTO member other than the United States to withdraw concessions under the WTO Agreement or otherwise to limit imports to prevent or remedy market disruption;

(3) by a WTO member other than the United States to apply a provisional safeguard within the meaning of the product-specific safeguard provision of the Protocol of Accession of the People's Republic of China to the WTO; or

(4) any combination of actions described in paragraphs (1) through (3).

(d) Basis for determination of significant diversion

(1) In determining whether significant diversion or the threat thereof exists for purposes of this section, the Commission shall take into account, to the extent such evidence is reasonably available—

(A) the monitoring conducted under subsection (a) of this section;

(B) the actual or imminent increase in United States market share held by such imports from the People's Republic of China;

(C) the actual or imminent increase in volume of such imports into the United States;

(D) the nature and extent of the action taken or proposed by the WTO member concerned;

(E) the extent of exports from the People's Republic of China to that WTO member and to the United States;

(F) the actual or imminent changes in exports to that WTO member due to the action taken or proposed;

(G) the actual or imminent diversion of exports from the People's Republic of China to countries other than the United States;

(H) cyclical or seasonal trends in import volumes into the United States of the products at issue; and

(I) conditions of demand and supply in the United States market for the products at issue.

The presence or absence of any factor under any of subparagraphs (A) through (I) is not necessarily dispositive of whether a significant diversion of trade or the threat thereof exists.

(2) For purposes of making its determination, the Commission shall examine changes in imports into the United States from the People's Republic of China since the time that the WTO member commenced the investigation that led to a request for consultations described in subsection (a) of this section.

(3) If more than one action by a WTO member or WTO members against a particular product is identified in the petition, request, or resolution under subsection (b) of this section or during the investigation, the Commission may cumulatively assess the actual or likely effects of such actions jointly in determining whether a significant diversion of trade or threat thereof exists.

(e) Commission determination; agreement authority

(1) The Commission shall make and transmit to the President and the Trade Representative its determination under subsection (b) of this section at the earliest practicable time, but in no case later than 45 days after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, under subsection (b) of this section. If the Commissioners voting are equally divided with respect to its determination, then the determination agreed upon by either group of Commissioners may be considered by the President and the Trade Representative as the determination of the Commission.

(2) The Trade Representative is authorized to enter into agreements with the People's Republic of China or the other WTO members concerned to take such action as necessary to prevent or remedy significant trade diversion or threat thereof into the domestic market of the United States, and should seek to conclude such agreements before the expiration of the 60-day consultation period provided for under the product-specific safeguard provision of the Protocol of Accession of the People's Republic of China to the WTO, which shall commence not later than 5 days after the Trade Representative receives an affirmative determination provided for in paragraph (1) or a determination which the Trade Representative considers to be an affirmative determination pursuant to paragraph (1).

(3) REPORT BY COMMISSION.—

(A) Not later than 10 days after a determination under subsection (b) of this section,[1] is made, the Commission shall transmit a report to the President and the Trade Representative.

(B) The Commission shall include in the report required under subparagraph (A) the following:

(i) The determination made under subsection (b) of this section and an explanation of the basis for the determination.

(ii) If the determination under subsection (b) of this section is affirmative, or may be considered by the President or the Trade Representative as affirmative under sub-

[1] So in original. The comma probably should not appear.

section (e)(1) of this section, the recommendations of the Commission on increased tariffs or other import restrictions to be imposed to prevent or remedy the trade diversion or threat thereof, and explanations of the bases for such recommendations. Only those members of the Commission who agreed to the affirmative determination under subsection (b) of this section are eligible to vote on the proposed action to prevent or remedy the trade diversion or threat thereof.

(iii) Any dissenting or separate views by members of the Commission regarding the determination and any recommendation referred to in clauses (i) and (ii).

(iv) A description of—

(I) the short- and long-term effects that implementation of the action recommended under clause (ii) is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers; and

(II) the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers and the communities where production facilities of such industry are located, and on other domestic industries.

(C) The Commission, after submitting a report to the President under subparagraph (A), shall promptly make it available to the public (with the exception of confidential business information) and cause a summary thereof to be published in the Federal Register.

(f) Public comment

If consultations fail to lead to an agreement with the People's Republic of China or the WTO member concerned within 60 days, the Trade Representative shall promptly publish notice in the Federal Register of any proposed action to prevent or remedy the trade diversion, and provide an opportunity for interested persons to present views and evidence on whether the proposed action is in the public interest.

(g) Recommendation to the President

Within 20 days after the end of consultations pursuant to subsection (e) of this section, the Trade Representative shall make a recommendation to the President on what action, if any, should be taken to prevent or remedy the trade diversion or threat thereof.

(h) Presidential action

Within 20 days after receipt of the recommendation from the Trade Representative, the President shall determine what action to take to prevent or remedy the trade diversion or threat thereof.

(i) Duration of action

Action taken under subsection (h) of this section shall be terminated not later than 30 days after expiration of the action taken by the WTO member or members involved against imports from the People's Republic of China.

(j) Review of circumstances

The Commission shall review the continued need for action taken under subsection (h) of this section if the WTO member or members involved notify the Committee on Safeguards of the WTO of any modification in the action taken by them against the People's Republic of China pursuant to consultation referred to in subsection (a) of this section. The Commission shall, not later than 60 days after such notification, determine whether a significant diversion of trade continues to exist and report its determination to the President. The President shall determine, within 15 days after receiving the Commission's report, whether to modify, withdraw, or keep in place the action taken under subsection (h) of this section.

(Pub. L. 93–618, title IV, § 422, as added Pub. L. 106–286, div. A, title I, § 103(a)(3), Oct. 10, 2000, 114 Stat. 887; amended Pub. L. 108–429, title II, § 2004(d)(4), Dec. 3, 2004, 118 Stat. 2592.)

AMENDMENTS

2004—Subsec. (j). Pub. L. 108–429 struck out par. (1) designation before ''The Commission shall review''.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2451b. Regulations; termination of provision

(a) To carry out restrictions and monitoring

The President shall by regulation provide for the efficient and fair administration of any restriction proclaimed pursuant to the[1] part and to provide for effective monitoring of imports under section 2451a(a) of this title.

(b) To carry out agreements

To carry out an agreement concluded pursuant to consultations under section 2451(j) or 2451a(e)(2) of this title, the President is authorized to prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement.

(c) Termination date

This part and any regulations issued under this part shall cease to be effective 12 years after the date of entry into force of the Protocol of Accession of the People's Republic of China to the WTO.

(Pub. L. 93–618, title IV, § 423, as added Pub. L. 106–286, div. A, title I, § 103(a)(3), Oct. 10, 2000, 114 Stat. 890.)

REFERENCES IN TEXT

The date of entry into force of the Protocol of Accession of the People's Republic of China to the WTO, referred to in subsec. (c), is Dec. 11, 2001.

CODIFICATION

Part, referred to in subsecs. (a) and (c), was in the original ''subtitle'' which was translated as reading ''chapter'', meaning chapter 2 of title IV of Pub. L.

[1] So in original. Probably should be ''this''.

93–618, as added, which enacted this part, to reflect the probable intent of Congress, because title IV of Pub. L. 93–618 contains no subtitles.

SUBCHAPTER V—GENERALIZED SYSTEM OF PREFERENCES

§ 2461. Authority to extend preferences

The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this subchapter. In taking any such action, the President shall have due regard for—

(1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;

(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

(3) the anticipated impact of such action on United States producers of like or directly competitive products; and

(4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

(Pub. L. 93–618, title V, § 501, as added Pub. L. 104–188, title I, § 1952(a), Aug. 20, 1996, 110 Stat. 1917.)

PRIOR PROVISIONS

A prior section 2461, Pub. L. 93–618, title V, § 501, Jan. 3, 1975, 88 Stat. 2066; Pub. L. 98–573, title V, § 502, Oct. 30, 1984, 98 Stat. 3018, related to authority to extend preferences, prior to the general amendment of this subchapter by Pub. L. 104–188.

EFFECTIVE DATE

Section 1953 of Pub. L. 104–188 provided that:

''(a) IN GENERAL.—The amendments made by this subtitle [subtitle J (§§ 1951–1954) of title I of Pub. L. 104–188, enacting this subchapter, amending sections 2702, 3011, 3202, 3331, and 3551 of this title, section 1444–2 of Title 7, Agriculture, section 4711 of Title 15, Commerce and Trade, sections 262p–4p and 2191a of Title 22, Foreign Relations and Intercourse, and section 871 of Title 26, Internal Revenue Code, and enacting provisions set out as a note under section 2101 of this title] apply to articles entered on or after October 1, 1996.

''(b) RETROACTIVE APPLICATION.—

''(1) GENERAL RULE.—Notwithstanding section 514 of the Tariff Act of 1930 [19 U.S.C. 1514] or any other provision of law and subject to subsection (c)—

''(A) any article that was entered—

''(i) after July 31, 1995, and

''(ii) before January 1, 1996, and

to which duty-free treatment under title V of the Trade Act of 1974 [this subchapter] would have applied if the entry had been made on July 31, 1995, shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry, and

''(B) any article that was entered—

''(i) after December 31, 1995, and

''(ii) before October 1, 1996, and

to which duty-free treatment under title V of the Trade Act of 1974 [this subchapter] (as amended by this subtitle) would have applied if the entry had been made on or after October 1, 1996, shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry.

''(2) LIMITATION ON REFUNDS.—No refund shall be made pursuant to this subsection before October 1, 1996.

''(3) ENTRY.—As used in this subsection, the term 'entry' includes a withdrawal from warehouse for consumption.

''(c) REQUESTS.—Liquidation or reliquidation may be made under subsection (b) with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date of the enactment of this Act [Aug. 20, 1996], that contains sufficient information to enable the Customs Service—

''(1) to locate the entry; or

''(2) to reconstruct the entry if it cannot be located.''

§ 2462. Designation of beneficiary developing countries

(a) Authority to designate countries

(1) Beneficiary developing countries

The President is authorized to designate countries as beneficiary developing countries for purposes of this subchapter.

(2) Least-developed beneficiary developing countries

The President is authorized to designate any beneficiary developing country as a least-developed beneficiary developing country for purposes of this subchapter, based on the considerations in section 2461 of this title and subsection (c) of this section.

(b) Countries ineligible for designation

(1) Specific countries

The following countries may not be designated as beneficiary developing countries for purposes of this subchapter:

(A) Australia.
(B) Canada.
(C) European Union member states.
(D) Iceland.
(E) Japan.
(F) Monaco.
(G) New Zealand.
(H) Norway.
(I) Switzerland.

(2) Other bases for ineligibility

The President shall not designate any country a beneficiary developing country under this subchapter if any of the following applies:

(A) Such country is a Communist country, unless—

(i) the products of such country receive nondiscriminatory treatment,

(ii) such country is a WTO Member (as such term is defined in section 3501(10) of this title) and a member of the International Monetary Fund, and

(iii) such country is not dominated or controlled by international communism.

(B) Such country is a party to an arrangement of countries and participates in any action pursuant to such arrangement, the effect of which is—

(i) to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level, and

(ii) to cause serious disruption of the world economy.

(C) Such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce.

(D)(i) Such country—

(I) has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

(II) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or

(III) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property,

unless clause (ii) applies.

(ii) This clause applies if the President determines that—

(I) prompt, adequate, and effective compensation has been or is being made to the citizen, corporation, partnership, or association referred to in clause (i),

(II) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or the country described in clause (i) is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(III) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum,

and the President promptly furnishes a copy of such determination to the Senate and House of Representatives.

(E) Such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

(F) Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism or the Secretary of State makes a determination with respect to such country under section 2405(j)(1)(A) of title 50, Appendix or such country has not taken steps to support the efforts of the United States to combat terrorism.

(G) Such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

(H) Such country has not implemented its commitments to eliminate the worst forms of child labor.

Subparagraphs (D), (E), (F), (G), and (H) (to the extent described in section 2467(6)(D) of this title) shall not prevent the designation of any country as a beneficiary developing country under this subchapter if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with the reasons therefor.

(c) Factors affecting country designation

In determining whether to designate any country as a beneficiary developing country under this subchapter, the President shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which the President deems appropriate;

(3) whether or not other major developed countries are extending generalized preferential tariff treatment to such country;

(4) the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(5) the extent to which such country is providing adequate and effective protection of intellectual property rights;

(6) the extent to which such country has taken action to—

(A) reduce trade distorting investment practices and policies (including export performance requirements); and

(B) reduce or eliminate barriers to trade in services; and

(7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

(d) Withdrawal, suspension, or limitation of country designation

(1) In general

The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this subchapter with re-

spect to any country. In taking any action under this subsection, the President shall consider the factors set forth in section 2461 of this title and subsection (c) of this section.

(2) Changed circumstances

The President shall, after complying with the requirements of subsection (f)(2) of this section, withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, the President determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under subsection (b)(2) of this section. Such country shall cease to be a beneficiary developing country on the day on which the President issues an Executive order or Presidential proclamation revoking the designation of such country under this subchapter.

(3) Advice to Congress

The President shall, as necessary, advise the Congress on the application of section 2461 of this title and subsection (c) of this section, and the actions the President has taken to withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country which has failed to adequately take the actions described in subsection (c) of this section.

(e) Mandatory graduation of beneficiary developing countries

If the President determines that a beneficiary developing country has become a ''high income'' country, as defined by the official statistics of the International Bank for Reconstruction and Development, then the President shall terminate the designation of such country as a beneficiary developing country for purposes of this subchapter, effective on January 1 of the second year following the year in which such determination is made.

(f) Congressional notification

(1) Notification of designation

(A) In general

Before the President designates any country as a beneficiary developing country under this subchapter, the President shall notify the Congress of the President's intention to make such designation, together with the considerations entering into such decision.

(B) Designation as least-developed beneficiary developing country

At least 60 days before the President designates any country as a least-developed beneficiary developing country, the President shall notify the Congress of the President's intention to make such designation.

(2) Notification of termination

If the President has designated any country as a beneficiary developing country under this subchapter, the President shall not terminate such designation unless, at least 60 days before such termination, the President has notified the Congress and has notified such country of the President's intention to terminate such designation, together with the considerations entering into such decision.

(Pub. L. 93–618, title V, §502, as added Pub. L. 104–188, title I, §1952(a), Aug. 20, 1996, 110 Stat. 1917; amended Pub. L. 104–295, §35(a), Oct. 11, 1996, 110 Stat. 3538; Pub. L. 106–200, title IV, §412(a), May 18, 2000, 114 Stat. 298; Pub. L. 107–210, div. D, title XLI, §4102(a), Aug. 6, 2002, 116 Stat. 1040.)

PRIOR PROVISIONS

A prior section 2462, Pub. L. 93–618, title V, §502(a)–(c), (e), Jan. 3, 1975, 88 Stat. 2066–2069; Pub. L. 94–455, title XVIII, §1802, Oct. 4, 1976, 90 Stat. 1763; Pub. L. 96–39, title XI, §§1106(g)(1), (2), 1111(a)(1), (2), July 26, 1979, 93 Stat. 312, 313, 315; Pub. L. 98–573, title V, §503, Oct. 30, 1984, 98 Stat. 3019; Pub. L. 99–47, §8(b)(2), June 11, 1985, 99 Stat. 85; Pub. L. 99–514, title XVIII, §1887(a)(5), Oct. 22, 1986, 100 Stat. 2923; Pub. L. 99–570, title IX, §9002(a), Oct. 27, 1986, 100 Stat. 3207–166; Pub. L. 101–179, title III, §301, Nov. 28, 1989, 103 Stat. 1311; Pub. L. 101–382, title I, §131, Aug. 20, 1990, 104 Stat. 643; Pub. L. 103–66, title XIII, §13802(a), Aug. 10, 1993, 107 Stat. 667; Pub. L. 103–149, §4(b)(9), Nov. 23, 1993, 107 Stat. 1506, related to beneficiary developing countries, prior to the general amendment of this subchapter by Pub. L. 104–188.

AMENDMENTS

2002—Subsec. (b)(2)(F). Pub. L. 107–210 inserted ''or such country has not taken steps to support the efforts of the United States to combat terrorism'' before period at end.

2000—Subsec. (b)(2). Pub. L. 106–200, §412(a)(2), in concluding provisions substituted ''(G), and (H) (to the extent described in section 2467(6)(D) of this title)'' for ''and (G)''.

Subsec. (b)(2)(H). Pub. L. 106–200, §412(a)(1), added subpar. (H).

1996—Subsec. (b)(2)(F). Pub. L. 104–295, amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 35(b) of Pub. L. 104–295 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1996.''

DELEGATION OF FUNCTIONS

Proc. No. 6942, Oct. 17, 1996, 61 F.R. 54719, provided in par. (5) that powers of the President granted in subsec. (f)(2) of this section to notify a country of the President's intention to terminate that country's status as a beneficiary developing country for purposes of the Generalized System of Preferences were delegated to the United States Trade Representative.

§2463. Designation of eligible articles

(a) Eligible articles

(1) Designation

(A) In general

Except as provided in subsection (b) of this section, the President is authorized to designate articles as eligible articles from all beneficiary developing countries for purposes of this subchapter by Executive order or Presidential proclamation after receiving the advice of the International Trade Commission in accordance with subsection (e) of this section.

(B) Least-developed beneficiary developing countries

Except for articles described in subparagraphs (A), (B), and (E) of subsection (b)(1) of this section and articles described in paragraphs (2) and (3) of subsection (b) of this section, the President may, in carrying out section 2462(d)(1) of this title and subsection (c)(1) of this section, designate articles as eligible articles only for countries designated as least-developed beneficiary developing countries under section 2462(a)(2) of this title if, after receiving the advice of the International Trade Commission in accordance with subsection (e) of this section, the President determines that such articles are not import-sensitive in the context of imports from least-developed beneficiary developing countries.

(C) Three-year rule

If, after receiving the advice of the International Trade Commission under subsection (e) of this section, an article has been formally considered for designation as an eligible article under this subchapter and denied such designation, such article may not be reconsidered for such designation for a period of 3 years after such denial.

(2) Rule of origin

(A) General rule

The duty-free treatment provided under this subchapter shall apply to any eligible article which is the growth, product, or manufacture of a beneficiary developing country if—

(i) that article is imported directly from a beneficiary developing country into the customs territory of the United States; and

(ii) the sum of—

(I) the cost or value of the materials produced in the beneficiary developing country or any two or more such countries that are members of the same association of countries and are treated as one country under section 2467(2) of this title, plus

(II) the direct costs of processing operations performed in such beneficiary developing country or such member countries,

is not less than 35 percent of the appraised value of such article at the time it is entered.

(B) Exclusions

An article shall not be treated as the growth, product, or manufacture of a beneficiary developing country by virtue of having merely undergone—

(i) simple combining or packaging operations, or

(ii) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(3) Regulations

The Secretary of the Treasury, after consulting with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out paragraph (2), including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this subchapter, an article—

(A) must be wholly the growth, product, or manufacture of a beneficiary developing country, or

(B) must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary developing country.

(b) Articles that may not be designated as eligible articles

(1) Import-sensitive articles

The President may not designate any article as an eligible article under subsection (a) of this section if such article is within one of the following categories of import-sensitive articles:

(A) Except as provided in paragraph (4), textile and apparel articles which were not eligible articles for purposes of this subchapter on January 1, 1994, as this subchapter was in effect on such date.

(B) Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions.

(C) Import-sensitive electronic articles.

(D) Import-sensitive steel articles.

(E) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of this subchapter on January 1, 1995, as this subchapter was in effect on such date.

(F) Import-sensitive semimanufactured and manufactured glass products.

(G) Any other articles which the President determines to be import-sensitive in the context of the Generalized System of Preferences.

(2) Articles against which other actions taken

An article shall not be an eligible article for purposes of this subchapter for any period during which such article is the subject of any action proclaimed pursuant to section 2253 of this title or section 1862 or 1981 of this title.

(3) Agricultural products

No quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this subchapter.

(4) Certain hand-knotted or hand-woven carpets

Notwithstanding paragraph (1)(A), the President may designate as an eligible article or articles under subsection (a) of this section carpets or rugs which are hand-loomed, hand-woven, hand-hooked, hand-tufted, or hand-knotted, and classifiable under subheading 5701.10.16, 5701.10.40, 5701.90.10, 5701.90.20,

5702.10.90, 5702.42.20, 5702.49.10, 5702.51.20, 5702.91.30, 5702.92.00, 5702.99.10, 5703.10.00, 5703.20.10, or 5703.30.00 of the Harmonized Tariff Schedule of the United States.

(c) Withdrawal, suspension, or limitation of duty-free treatment; competitive need limitation

(1) In general

The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this subchapter with respect to any article, except that no rate of duty may be established with respect to any article pursuant to this subsection other than the rate which would apply but for this subchapter. In taking any action under this subsection, the President shall consider the factors set forth in sections 2461 and 2462(c) of this title.

(2) Competitive need limitation

(A) Basis for withdrawal of duty-free treatment

(i) In general

Except as provided in clause (ii) and subject to subsection (d) of this section, whenever the President determines that a beneficiary developing country has exported (directly or indirectly) to the United States during any calendar year beginning after December 31, 1995—

(I) a quantity of an eligible article having an appraised value in excess of the applicable amount for the calendar year, or

(II) a quantity of an eligible article equal to or exceeding 50 percent of the appraised value of the total imports of that article into the United States during any calendar year,

the President shall, not later than July 1 of the next calendar year, terminate the duty-free treatment for that article from that beneficiary developing country.

(ii) Annual adjustment of applicable amount

For purposes of applying clause (i), the applicable amount is—

(I) for 1996, $75,000,000, and

(II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus $5,000,000.

(B) "Country" defined

For purposes of this paragraph, the term ''country'' does not include an association of countries which is treated as one country under section 2467(2) of this title, but does include a country which is a member of any such association.

(C) Redesignations

A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of subparagraph (A) may, subject to the considerations set forth in sections 2461 and 2462 of this title, be redesignated a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in subparagraph (A) during the preceding calendar year.

(D) Least-developed beneficiary developing countries and beneficiary sub-Saharan African countries

Subparagraph (A) shall not apply to any least-developed beneficiary developing country or any beneficiary sub-Saharan African country.

(E) Articles not produced in the United States excluded

Subparagraph (A)(i)(II) shall not apply with respect to any eligible article if a like or directly competitive article was not produced in the United States on January 1, 1995.

(F) De minimis waivers

(i) In general

The President may disregard subparagraph (A)(i)(II) with respect to any eligible article from any beneficiary developing country if the aggregate appraised value of the imports of such article into the United States during the preceding calendar year does not exceed the applicable amount for such preceding calendar year.

(ii) Applicable amount

For purposes of applying clause (i), the applicable amount is—

(I) for calendar year 1996, $13,000,000, and

(II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus $500,000.

(d) Waiver of competitive need limitation

(1) In general

The President may waive the application of subsection (c)(2) of this section with respect to any eligible article of any beneficiary developing country if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2)(A) of this section was made with respect to such eligible article, the President—

(A) receives the advice of the International Trade Commission under section 1332 of this title on whether any industry in the United States is likely to be adversely affected by such waiver,

(B) determines, based on the considerations described in sections 2461 and 2462(c) of this title and the advice described in subparagraph (A), that such waiver is in the national economic interest of the United States, and

(C) publishes the determination described in subparagraph (B) in the Federal Register.

(2) Considerations by the President

In making any determination under paragraph (1), the President shall give great weight to—

(A) the extent to which the beneficiary developing country has assured the United

States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and

(B) the extent to which such country provides adequate and effective protection of intellectual property rights.

(3) Other bases for waiver

The President may waive the application of subsection (c)(2) of this section if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2) of this section was made with respect to a beneficiary developing country, the President determines that—

(A) there has been a historical preferential trade relationship between the United States and such country,

(B) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

(C) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce,

and the President publishes that determination in the Federal Register.

(4) Limitations on waivers

(A) In general

The President may not exercise the waiver authority under this subsection with respect to a quantity of an eligible article entered during any calendar year beginning after 1995, the aggregate appraised value of which equals or exceeds 30 percent of the aggregate appraised value of all articles that entered duty-free under this subchapter during the preceding calendar year.

(B) Other waiver limits

(i) The President may not exercise the waiver authority provided under this subsection with respect to a quantity of an eligible article entered during any calendar year beginning after 1995, the aggregate appraised value of which exceeds 15 percent of the aggregate appraised value of all articles that have entered duty-free under this subchapter during the preceding calendar year from those beneficiary developing countries which for the preceding calendar year—

(I) had a per capita gross national product (calculated on the basis of the best available information, including that of the International Bank for Reconstruction and Development) of $5,000 or more; or

(II) had exported (either directly or indirectly) to the United States a quantity of articles that was duty-free under this subchapter that had an aggregate appraised value of more than 10 percent of the aggregate appraised value of all articles that entered duty-free under this subchapter during that year.

(ii) Not later than July 1 of each year, the President should revoke any waiver that has then been in effect with respect to an article for 5 years or more if the beneficiary developing country has exported to the United States (directly or indirectly) during the preceding calendar year a quantity of the article—

(I) having an appraised value in excess of 1.5 times the applicable amount set forth in subsection (c)(2)(A)(ii) for that calendar year; or

(II) exceeding 75 percent of the appraised value of the total imports of that article into the United States during that calendar year.

(C) Calculation of limitations

There shall be counted against the limitations imposed under subparagraphs (A) and (B) for any calendar year only that value of any eligible article of any country that—

(i) entered duty-free under this subchapter during such calendar year; and

(ii) is in excess of the value of that article that would have been so entered during such calendar year if the limitations under subsection (c)(2)(A) of this section applied.

(5) Effective period of waiver

Any waiver granted under this subsection shall remain in effect until the President determines that such waiver is no longer warranted due to changed circumstances.

(e) International Trade Commission advice

Before designating articles as eligible articles under subsection (a)(1) of this section, the President shall publish and furnish the International Trade Commission with lists of articles which may be considered for designation as eligible articles for purposes of this subchapter. The provisions of sections 2151, 2152, 2153, and 2154 of this title shall be complied with as though action under section 2461 of this title and this section were action under section 2133 of this title to carry out a trade agreement entered into under section 2133 of this title.

(f) Special rule concerning Puerto Rico

No action under this subchapter may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 1319 of this title on coffee imported into Puerto Rico.

(Pub. L. 93–618, title V, § 503, as added Pub. L. 104–188, title I, § 1952(a), Aug. 20, 1996, 110 Stat. 1921; amended Pub. L. 106–36, title I, § 1001(a)(7), June 25, 1999, 113 Stat. 130; Pub. L. 106–200, title I, § 111(b), May 18, 2000, 114 Stat. 258; Pub. L. 108–429, title I, § 1555(a), (b), Dec. 3, 2004, 118 Stat. 2578, 2579; Pub. L. 109–432, div. D, title VIII, § 8001, Dec. 20, 2006, 120 Stat. 3195.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (b)(4), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

PRIOR PROVISIONS

A prior section 2463, Pub. L. 93–618, title V, § 503, Jan. 3, 1975, 88 Stat. 2069; Pub. L. 96–39, title XI, § 1111(a)(3), July 26, 1979, 93 Stat. 315; Pub. L. 98–573, title V, § 504, Oct. 30, 1984, 98 Stat. 3020; Pub. L. 99–47, § 8(b)(2), June 11, 1985, 99 Stat. 85; Pub. L. 99–514, title XVIII, § 1889(7), Oct. 22, 1986, 100 Stat. 2926; Pub. L. 100–418, title I, § 1903, Aug. 23, 1988, 102 Stat. 1313; Pub. L. 101–382, title II, § 226, Aug. 20, 1990, 104 Stat. 660; Pub. L. 103–465, title IV, § 404(e)(3), Dec. 8, 1994, 108 Stat. 4961, related to eligible

articles, prior to the general amendment of this subchapter by Pub. L. 104–188.

AMENDMENTS

2006—Subsec. (d)(4)(B). Pub. L. 109–432 designated existing provisions as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, and added cl. (ii).

2004—Subsec. (b)(1)(A). Pub. L. 108–429, §1555(b), substituted ''Except as provided in paragraph (4), textile'' for ''Textile''.

Subsec. (b)(4). Pub. L. 108–429, §1555(a), added par. (4).

2000—Subsec. (c)(2)(D). Pub. L. 106–200 amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: ''Subparagraph (A) shall not apply to any least-developed beneficiary developing country.''

1999—Subsec. (a)(2)(A)(ii). Pub. L. 106–36 added subcl. (II) and concluding provisions and struck out former subcl. (II) which read as follows: ''the direct costs of processing operations performed in such beneficiary developing country or such member countries, is not less than 35 percent of the appraised value of such article at the time it is entered.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–429, title I, §1555(c), Dec. 3, 2004, 118 Stat. 2579, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to any article entered, or withdrawn from warehouse for consumption, on or after the date on which the President makes a designation with respect to the article under section 503(b)(4) of the Trade Act of 1974 [subsec. (b)(4) of this section], as added by subsection (a).''

§ 2464. Review and report to Congress

The President shall submit an annual report to the Congress on the status of internationally recognized worker rights within each beneficiary developing country, including the findings of the Secretary of Labor with respect to the beneficiary country's implementation of its international commitments to eliminate the worst forms of child labor.

(Pub. L. 93–618, title V, §504, as added Pub. L. 104–188, title I, §1952(a), Aug. 20, 1996, 110 Stat. 1925; amended Pub. L. 106–200, title IV, §412(c), May 18, 2000, 114 Stat. 299.)

PRIOR PROVISIONS

A prior section 2464, Pub. L. 93–618, title V, §504, Jan. 3, 1975, 88 Stat. 2070; Pub. L. 96–39, title XI, §§1106(g)(3), 1111(a)(4), July 26, 1979, 93 Stat. 313, 315; Pub. L. 98–573, title V, §505, Oct. 30, 1984, 98 Stat. 3020; Pub. L. 99–47, §8(b)(2), June 11, 1985, 99 Stat. 85; Pub. L. 99–514, title XVIII, §1887(a)(6), Oct. 22, 1986, 100 Stat. 2923, related to limitations on preferential treatment, prior to the general amendment of this subchapter by Pub. L. 104–188.

AMENDMENTS

2000—Pub. L. 106–200 inserted before period at end '', including the findings of the Secretary of Labor with respect to the beneficiary country's implementation of its international commitments to eliminate the worst forms of child labor''.

§ 2465. Date of termination

No duty-free treatment provided under this subchapter shall remain in effect after December 31, 2008.

(Pub. L. 93–618, title V, §505, as added Pub. L. 104–188, title I, §1952(a), Aug. 20, 1996, 110 Stat. 1925; amended Pub. L. 105–34, title IX, §981(a), Aug. 5, 1997, 111 Stat. 902; Pub. L. 105–277, div. J, title I, §1011(a), Oct. 21, 1998, 112 Stat. 2681–900; Pub. L. 106–170, title V, §508(a), Dec. 17, 1999, 113 Stat. 1923; Pub. L. 107–210, div. D, title XLI, §4101(a), Aug. 6, 2002, 116 Stat. 1040; Pub. L. 109–432, div. D, title VIII, §8002, Dec. 20, 2006, 120 Stat. 3195.)

PRIOR PROVISIONS

A prior section 2465, Pub. L. 93–618, title V, §505, Jan. 3, 1975, 88 Stat. 2071; Pub. L. 98–573, title V, §506(a), Oct. 30, 1984, 98 Stat. 3023; Pub. L. 103–66, title XIII, §13802(b)(1), Aug. 10, 1993, 107 Stat. 667; Pub. L. 103–465, title VI, §601(a), Dec. 8, 1994, 108 Stat. 4990, related to termination of duty-free treatment and reports, prior to the general amendment of this subchapter by Pub. L. 104–188.

AMENDMENTS

2006—Pub. L. 109–432 substituted ''December 31, 2008'' for ''December 31, 2006''.

2002—Pub. L. 107–210 substituted ''December 31, 2006'' for ''September 30, 2001''.

1999—Pub. L. 106–170 substituted ''September 30, 2001'' for ''June 30, 1999''.

1998—Pub. L. 105–277 substituted ''June 30, 1999'' for ''June 30, 1998''.

1997—Pub. L. 105–34 substituted ''June 30, 1998'' for ''May 31, 1997''.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §508(b), Dec. 17, 1999, 113 Stat. 1923, provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] applies to articles entered on or after the date of the enactment of this Act [Dec. 17, 1999].

''(2) RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS.—

''(A) GENERAL RULE.—Notwithstanding section 514 of the Tariff Act of 1930 [19 U.S.C. 1514] or any other provision of law, and subject to paragraph (3), any entry—

''(i) of an article to which duty-free treatment under title V of the Trade Act of 1974 [19 U.S.C. 2461 et seq.] would have applied if such entry had been made on July 1, 1999, and such title had been in effect on July 1, 1999; and

''(ii) that was made—

''(I) after June 30, 1999; and

''(II) before the date of the enactment of this Act [Dec. 17, 1999],

shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry.

''(B) ENTRY.—As used in this paragraph, the term 'entry' includes a withdrawal from warehouse for consumption.

''(3) REQUESTS.—Liquidation or reliquidation may be made under paragraph (2) with respect to an entry only if a request therefore is filed with the Customs Service, within 180 days after the date of the enactment of this Act [Dec. 17, 1999], that contains sufficient information to enable the Customs Service—

''(A) to locate the entry; or

''(B) to reconstruct the entry if it cannot be located.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title I, §1011(b), Oct. 21, 1998, 112 Stat. 2681–900, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] apply to articles entered on or after the date of the enactment of this Act [Oct. 21, 1998].

''(2) RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS.—

''(A) GENERAL RULE.—Notwithstanding section 514 of the Tariff Act of 1930 [19 U.S.C. 1514] or any other

provision of law, and subject to paragraph (3), any entry—

''(i) of an article to which duty-free treatment under title V of the Trade Act of 1974 [19 U.S.C. 2461 et seq.] would have applied if such entry had been made on July 1, 1998, and such title had been in effect on July 1, 1998, and

''(ii) that was made—

''(I) after June 30, 1998, and

''(II) before the date of enactment of this Act,

shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry.

''(B) ENTRY.—As used in this paragraph, the term 'entry' includes a withdrawal from warehouse for consumption.

''(3) REQUESTS.—Liquidation or reliquidation may be made under paragraph (2) with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date of enactment of this Act, that contains sufficient information to enable the Customs Service—

''(A) to locate the entry; or

''(B) to reconstruct the entry if it cannot be located.''

RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS

Pub. L. 107–210, div. D, title XLI, § 4101(b), Aug. 6, 2002, 116 Stat. 1040, as amended by Pub. L. 108–429, title II, § 2004(a)(20), Dec. 3, 2004, 118 Stat. 2591, provided that:

''(1) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 [19 U.S.C. 1514] or any other provision of law, and subject to paragraph (2), the entry of any article—

''(A) to which duty-free treatment under title V of the Trade Act of 1974 [19 U.S.C. 2461 et seq.] would have applied if the entry had been made on September 30, 2001,

''(B) that was made after September 30, 2001, and before the date of the enactment of this Act [Aug. 6, 2002], and

''(C) to which duty-free treatment under title V of that Act did not apply,

shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry.

''(2) REQUESTS.—Liquidation or reliquidation may be made under paragraph (1) with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date of the enactment of this Act, that contains sufficient information to enable the Customs Service—

''(A) to locate the entry; or

''(B) to reconstruct the entry if it cannot be located.

''(3) DEFINITION.—As used in this subsection, the term 'entry' includes a withdrawal from warehouse for consumption.''

[For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

Pub. L. 105–34, title IX, § 981(b), Aug. 5, 1997, 111 Stat. 902, provided that the entry of any article to which duty-free treatment under this subchapter would have applied if the entry had been made on May 31, 1997, and that was made after May 31, 1997, and before Aug. 5, 1997, would be liquidated or reliquidated as free of duty, and the Secretary of the Treasury would refund any duty paid with respect to such entry, only if a request therefor was filed with the Customs Service, within 180 days after Aug. 5, 1997, that contained sufficient information to enable the Customs Service to locate the entry, or to reconstruct the entry if it could not be located.

Pub. L. 103–465, title VI, § 601(b), Dec. 8, 1994, 108 Stat. 4991, as amended by Pub. L. 104–295, § 20(f)(2), Oct. 11, 1996, 110 Stat. 3529, provided that the entry of any article to which duty-free treatment under this subchapter would have applied if the entry had been made on Sept. 30, 1994, and that was made after Sept. 30, 1994, and before Dec. 8, 1994, would be liquidated or reliquidated as free of duty, and the Secretary of the Treasury would refund any duty paid with respect to such entry, only if a request therefor was filed with the Customs Service, within 180 days after Dec. 8, 1994, that contained sufficient information to enable the Customs Service to locate the entry, or to reconstruct the entry if it could not be located.

Pub. L. 103–66, title XIII, § 13802(b)(2), Aug. 10, 1993, 107 Stat. 667, provided that, upon proper request filed with the appropriate customs officer within 180 days after Aug. 10, 1993, the entry of any article to which duty-free treatment under this subchapter would have applied if the entry had been made on July 4, 1993, and that was made after July 4, 1993, and before Aug. 10, 1993, would be liquidated or reliquidated as free of duty, and the Secretary of the Treasury would refund any duty paid with respect to such entry.

§ 2466. Agricultural exports of beneficiary developing countries

The appropriate agencies of the United States shall assist beneficiary developing countries to develop and implement measures designed to assure that the agricultural sectors of their economies are not directed to export markets to the detriment of the production of foodstuffs for their citizenry.

(Pub. L. 93–618, title V, § 506, as added Pub. L. 104–188, title I, § 1952(a), Aug. 20, 1996, 110 Stat. 1925.)

PRIOR PROVISIONS

A prior section 2466, Pub. L. 93–618, title V, § 506, as added Pub. L. 98–573, title V, § 507(a), Oct. 30, 1984, 98 Stat. 3023, related to agricultural exports of beneficiary developing countries, prior to the general amendment of this subchapter by Pub. L. 104–188.

§ 2466a. Designation of sub-Saharan African countries for certain benefits

(a) Authority to designate

(1) In general

Notwithstanding any other provision of law, the President is authorized to designate a country listed in section 107 of the African Growth and Opportunity Act [19 U.S.C. 3706] as a beneficiary sub-Saharan African country eligible for the benefits described in subsection (b) of this section—

(A) if the President determines that the country meets the eligibility requirements set forth in section 104 of that Act [19 U.S.C. 3703], as such requirements are in effect on May 18, 2000; and

(B) subject to the authority granted to the President under subsections (a), (d), and (e) of section 2462 of this title, if the country otherwise meets the eligibility criteria set forth in section 2462 of this title.

(2) Monitoring and review of certain countries

The President shall monitor, review, and report to Congress annually on the progress of each country listed in section 107 of the Afri-

can Growth and Opportunity Act in meeting the requirements described in paragraph (1) in order to determine the current or potential eligibility of each country to be designated as a beneficiary sub-Saharan African country for purposes of this section. The President's determinations, and explanations of such determinations, with specific analysis of the eligibility requirements described in paragraph (1)(A), shall be included in the annual report required by section 106 of the African Growth and Opportunity Act [19 U.S.C. 3705].

(3) Continuing compliance

If the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the requirements described in paragraph (1), the President shall terminate the designation of that country as a beneficiary sub-Saharan African country for purposes of this section, effective on January 1 of the year following the year in which such determination is made.

(b) Preferential tariff treatment for certain articles

(1) In general

The President may provide duty-free treatment for any article described in section 2463(b)(1)(B) through (G) of this title that is the growth, product, or manufacture of a beneficiary sub-Saharan African country described in subsection (a) of this section, if, after receiving the advice of the International Trade Commission in accordance with section 2463(e) of this title, the President determines that such article is not import-sensitive in the context of imports from beneficiary sub-Saharan African countries.

(2) Rules of origin

The duty-free treatment provided under paragraph (1) shall apply to any article described in that paragraph that meets the requirements of section 2463(a)(2) of this title, except that—

(A) if the cost or value of materials produced in the customs territory of the United States is included with respect to that article, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (A) of section 2463(a)(2) of this title; and

(B) the cost or value of the materials included with respect to that article that are produced in one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries shall be applied in determining such percentage.

(c) Beneficiary sub-Saharan African countries, etc.

For purposes of this subchapter—

(1) the terms ''beneficiary sub-Saharan African country'' and ''beneficiary sub-Saharan African countries'' mean a country or countries listed in section 107 of the African Growth and Opportunity Act [19 U.S.C. 3706] that the President has determined is eligible under subsection (a) of this section.

(2) the term ''former beneficiary sub-Saharan African country'' means a country that, after being designated as a beneficiary sub-Saharan African country under the African Growth and Opportunity Act [19 U.S.C. 3701 et seq.], ceased to be designated as such a country by reason of its entering into a free trade agreement with the United States.

(Pub. L. 93–618, title V, §506A, as added Pub. L. 106–200, title I, §111(a), May 18, 2000, 114 Stat. 257; amended Pub. L. 108–274, §7(a)(2), July 13, 2004, 118 Stat. 823.)

REFERENCES IN TEXT

The African Growth and Opportunity Act, referred to in subsec. (c)(2), is title I of Pub. L. 106–200, May 18, 2000, 114 Stat. 252, as amended, which is classified principally to chapter 23 (§3701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of this title and Tables.

AMENDMENTS

2004—Subsec. (b)(2)(B). Pub. L. 108–274, §7(a)(2)(A), inserted ''or former beneficiary sub-Saharan African countries'' after ''countries''.

Subsec. (c). Pub. L. 108–274, §7(a)(2)(B), substituted ''subchapter—'' for ''subchapter,'', inserted par. (1) designation before ''the terms'', and added par. (2).

§ 2466b. Termination of benefits for sub-Saharan African countries

In the case of a beneficiary sub-Saharan African country, as defined in section 2466a(c) of this title, duty-free treatment provided under this subchapter shall remain in effect through September 30, 2015.

(Pub. L. 93–618, title V, §506B, as added Pub. L. 106–200, title I, §114, May 18, 2000, 114 Stat. 266; amended Pub. L. 108–274, §7(a)(1), July 13, 2004, 118 Stat. 823.)

AMENDMENTS

2004—Pub. L. 108–274 substituted ''2015'' for ''2008''.

§ 2467. Definitions

For purposes of this subchapter:

(1) Beneficiary developing country

The term ''beneficiary developing country'' means any country with respect to which there is in effect an Executive order or Presidential proclamation by the President designating such country as a beneficiary developing country for purposes of this subchapter.

(2) Country

The term ''country'' means any foreign country or territory, including any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties, the President may by Executive order or Presidential proclamation provide that all members of such association other than members which are barred from designation under section 2462(b) of this title shall be treated as one country for purposes of this subchapter.

(3) Entered

The term ''entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(4) Internationally recognized worker rights

The term ''internationally recognized worker rights'' includes—

(A) the right of association;

(B) the right to organize and bargain collectively;

(C) a prohibition on the use of any form of forced or compulsory labor;

(D) a minimum age for the employment of children, and a prohibition on the worst forms of child labor, as defined in paragraph (6); and

(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(5) Least-developed beneficiary developing country

The term ''least-developed beneficiary developing country'' means a beneficiary developing country that is designated as a least-developed beneficiary developing country under section 2462(a)(2) of this title.

(6) Worst forms of child labor

The term ''worst forms of child labor'' means—

(A) all forms of slavery or practices similar to slavery, such as the sale or trafficking of children, debt bondage and serfdom, or forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;

(B) the use, procuring, or offering of a child for prostitution, for the production of pornography or for pornographic purposes;

(C) the use, procuring, or offering of a child for illicit activities in particular for the production and trafficking of drugs; and

(D) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children.

The work referred to in subparagraph (D) shall be determined by the laws, regulations, or competent authority of the beneficiary developing country involved.

(Pub. L. 93–618, title V, § 507, as added Pub. L. 104–188, title I, § 1952(a), Aug. 20, 1996, 110 Stat. 1926; amended Pub. L. 106–200, title IV, § 412(b), May 18, 2000, 114 Stat. 298; Pub. L. 107–210, div. D, title XLI, § 4102(b), Aug. 6, 2002, 116 Stat. 1041.)

AMENDMENTS

2002—Par. (4)(D). Pub. L. 107–210 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''a minimum age for the employment of children; and''.

2000—Par. (6). Pub. L. 106–200 added par. (6).

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER VI—GENERAL PROVISIONS

§ 2481. Definitions

For purposes of this chapter—

(1) The term ''duty'' includes the rate and form of any import duty, including but not limited to tariff-rate quotas.

(2) The term ''other import restriction'' includes a limitation, prohibition, charge, or exaction other than duty, imposed on importation or imposed for the regulation of importation. The term does not include any orderly marketing agreement.

(3) The term ''ad valorem'' includes ad valorem equivalent. Whenever any limitation on the amount by which or to which any rate of duty may be decreased or increased pursuant to a trade agreement is expressed in terms of an ad valorem percentage, the ad valorem amount taken into account for purposes of such limitation shall be determined by the President on the basis of the value of imports of the articles concerned during the most recent representative period.

(4) The term ''ad valorem equivalent'' means the ad valorem equivalent of a specific rate or, in the case of a combination of rates including a specific rate, the sum of the ad valorem equivalent of the specific rate and of the ad valorem rate. The ad valorem equivalent shall be determined by the President on the basis of the value of imports of the article concerned during the most recent representative period. In determining the value of imports, the President shall utilize, to the maximum extent practicable, the standards of valuation contained in section 1401a or 1402[1] of this title (as in effect before the effective date of the amendments made by title II of the Trade Agreements Act of 1979) or in section 1401a of this title (as in effect on the effective date of such title II amendments) whichever is applicable to the article concerned during such representative period.

(5) An imported article is ''directly competitive with'' a domestic article at an earlier or later stage of processing, and a domestic article is ''directly competitive with'' an imported article at an earlier or later stage of processing, if the importation of the article has an economic effect on producers of the domestic article comparable to the effect of importation of articles in the same stage of processing as the domestic article. For purposes of this paragraph, the unprocessed article is at an earlier stage of processing.

(6) The term ''modification'', as applied to any duty or other import restriction, includes the elimination of any duty or other import restriction.

(7) The term ''existing'' means (A) when used, without the specification of any date, with respect to any matter relating to entering into or carrying out a trade agreement or other action authorized by this chapter, existing on the day on which such trade agreement is entered into or such other action is taken; and (B) when used with respect to a rate of duty, the nonpreferential rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) set forth in rate column numbered 1 of chapters 1 through 97 of the Harmonized Tariff Schedule

[1] See References in Text note below.

of the United States on the date specified or (if no date is specified) on the day referred to in clause (A).

(8) A product of a country or area is an article which is the growth, produce, or manufacture of such country or area.

(9) The term ''nondiscriminatory treatment'' means trade treatment based on normal trade relations (known under international law as most-favored-nation treatment).

(10) The term ''commerce'' includes services associated with international trade.

(Pub. L. 93–618, title VI, § 601, Jan. 3, 1975, 88 Stat. 2071; Pub. L. 96–39, title II, § 202(c)(1), title XI, § 1106(h)(1), July 26, 1979, 93 Stat. 202, 313; Pub. L. 100–418, title I, § 1214(j)(5), Aug. 23, 1988, 102 Stat. 1158; Pub. L. 105–206, title V, § 5003(b)(2)(B), July 22, 1998, 112 Stat. 789.)

REFERENCES IN TEXT

Section 1402 of this title, referred to in par. (4), was repealed by Pub. L. 96–39, title II, § 201(b), July 26, 1979, 93 Stat. 201.

The effective date of the amendments made by title II of the Trade Agreements Act of 1979, referred to in par. (4), is July 1, 1980. See section 204(a) of Pub. L. 96–39, set out as an Effective Date of 1979 Amendment note under section 1401a of this title.

The Harmonized Tariff Schedule of the United States, referred to in par. (7), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

AMENDMENTS

1998—Par. (9). Pub. L. 105–206 substituted ''trade treatment based on normal trade relations (known under international law as most-favored-nation treatment)'' for ''most-favored-nation treatment''.

1988—Par. (7). Pub. L. 100–418 substituted ''chapters 1 through 97 of the Harmonized Tariff Schedule of the United States'' for ''schedules 1 through 7 of the Tariff Schedules of the United States''.

1979—Par. (2). Pub. L. 96–39, § 1106(h)(1), substituted ''or exaction'' for ''and exaction''.

Par. (4). Pub. L. 96–39, § 202(c)(1), substituted ''section 1401a or 1402 of this title (as in effect before the effective date of the amendments made by title II of the Trade Agreements Act of 1979) or in sections 1401a of this title (as in effect on the effective date of such title II amendments) whichever is applicable'' for ''section 1401a or 1402 of this title applicable''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by section 202(c)(1) of Pub. L. 96–39 effective July 1, 1980, see section 204(a) of Pub. L. 96–39, set out as a note under section 1401a of this title.

Amendment by section 1106(h)(1) of Pub. L. 96–39 effective July 26, 1979, see section 1114 of Pub. L. 96–39, set out as an Effective Date note under section 2581 of this title.

SAVINGS PROVISION

Pub. L. 105–206, title V, § 5003(c), July 22, 1998, 112 Stat. 790, provided that: ''Nothing in this section [amending this section, sections 1881, 2432, 3332 and 3555 of this title, and sections 5401 and 5713 of Title 22, Foreign Relations and Intercourse, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 2112 of this title] shall affect the meaning of any provision of law, Executive order, Presidential proclamation, rule, regulation, delegation of authority, other document, or treaty or other international agreement of the United States relating to the principle of 'most-favored-nation' (or 'most favored nation') treatment. Any Executive order, Presidential proclamation, rule, regulation, delegation of authority, other document, or treaty or other international agreement of the United States that has been issued, made, granted, or allowed to become effective and that is in effect on the effective date of this Act [July 22, 1998], or was to become effective on or after the effective date of this Act, shall continue in effect according to its terms until modified, terminated, superseded, set aside, or revoked in accordance with law.''

CLARIFICATION OF DESIGNATION OF NORMAL TRADE RELATIONS

Pub. L. 105–206, title V, § 5003(a), July 22, 1998, 112 Stat. 789, provided that:

''(1) FINDINGS.—The Congress makes the following findings:

''(A) Since the 18th century, the principle of nondiscrimination among countries with which the United States has trade relations, commonly referred to as 'most-favored-nation' treatment, has been a cornerstone of United States trade policy.

''(B) Although the principle remains firmly in place as a fundamental concept in United States trade relations, the term 'most-favored-nation' is a misnomer which has led to public misunderstanding.

''(C) It is neither the purpose nor the effect of the most-favored-nation principle to treat any country as 'most favored'. To the contrary, the principle reflects the intention to confer on a country the same trade benefits that are conferred on any other country, that is, the intention not to discriminate among trading partners.

''(D) The term 'normal trade relations' is a more accurate description of the principle of nondiscrimination as it applies to the tariffs applicable generally to imports from United States trading partners, that is, the general rates of duty set forth in column 1 of the Harmonized Tariff Schedule of the United States.

''(2) POLICY.—It is the sense of the Congress that—

''(A) the language used in United States laws, treaties, agreements, executive orders, directives, and regulations should more clearly and accurately reflect the underlying principles of United States trade policy; and

''(B) accordingly, the term 'normal trade relations' should, where appropriate, be substituted for the term 'most-favored-nation'.''

§ 2482. Exercise of functions of International Trade Commission

(a) Preliminary investigation

In order to expedite the performance of its functions under this chapter, the International Trade Commission may conduct preliminary investigations, determine the scope and manner of its proceedings, and consolidate proceedings before it.

(b) Use of authority granted under other provisions

In performing its functions under this chapter, the Commission may exercise any authority granted to it under any other Act.

(c) Gathering of current information

The Commission shall at all times keep informed concerning the operation and effect of provisions relating to duties or other import restrictions of the United States contained in trade agreements entered into under the trade agreements program.

(Pub. L. 93–618, title VI, § 603, Jan. 3, 1975, 88 Stat. 2073.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original ''this Act'', meaning Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

§ 2483. Consequential changes in Tariff Schedules of the United States

The President shall from time to time, as appropriate, embody in the Harmonized Tariff Schedule of the United States the substance of the relevant provisions of this chapter, and of other Acts affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any rate of duty or other import restriction.

(Pub. L. 93–618, title VI, § 604, Jan. 3, 1975, 88 Stat. 2073; Pub. L. 100–418, title I, §§ 1213(a), 1214(j)(4), Aug. 23, 1988, 102 Stat. 1155, 1158.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in text, is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

AMENDMENTS

1988—Pub. L. 100–418 substituted ''Harmonized Tariff Schedule of the United States'' for ''Tariff Schedules of the United States'' and inserted ''removal,'' after ''including''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.

DELEGATION OF FUNCTIONS

Authority of President under this section to embody rectifications, technical or conforming changes, or similar modifications in the Harmonized Tariff Schedule delegated to the United States Trade Representative by par. (4) of Proc. No. 6969, Jan. 27, 1997, 62 F.R. 4417.

PROC. NO. 6914. TO MODIFY THE ALLOCATION OF TARIFF-RATE QUOTAS FOR CERTAIN CHEESES

Proc. No. 6914, Aug. 26, 1996, 61 F.R. 45851, provided:

1. On January 1, 1995, Austria, Finland, and Sweden acceded to the European Communities (EC), and the EC customs union of 12 member countries (''EC-12'') was enlarged to a customs union of 15 member countries (''EC-15''). At that time, the EC-12, Austria, Finland, and Sweden withdrew their tariff schedules under the World Trade Organization and applied the common external tariff of the EC-12 to imports into the EC-15. The United States and the EC then entered into negotiations under Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade 1994 to compensate the United States for the resulting increase in some tariffs on U.S. exports to Austria, Finland, and Sweden.

2. On July 22, 1996, the United States and the EC signed an agreement concluding the negotiations on compensation. To recognize the membership of Austria, Finland, and Sweden in the EC-15, the tariff-rate quota (TRQ) allocations for cheeses from these countries will become part of the total TRQ allocations for cheeses from the EC-15, but will be reserved for use by these countries through 1997.

3. Section 404(d)(3) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas and to modify any allocation as the President determines appropriate. Pursuant to section 404(d)(3) of the URAA, I have determined that it is appropriate to modify the TRQ allocations for cheeses by providing that the TRQ allocations for cheeses from Austria, Finland, and Sweden will become part of the total TRQ allocations for cheeses from the EC-15, but will be reserved for use by these countries through 1997.

4. Section 604 of the Trade Act of 1974, as amended (''Trade Act'') (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that Act, and of other Acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction. The modification of the TRQ allocations for cheeses is such an action.

5. In paragraph (3) of Proclamation 6763 of December 23, 1994, I delegated my authority under section 404(d)(3) of the Trade Act [probably means section 404(d)(3) of the URAA, 19 U.S.C. 3601(d)(3)] to the United States Trade Representative (USTR). I have determined that it is appropriate to authorize the USTR to exercise my authority under section 604 of the Trade Act [19 U.S.C. 2483] to embody in the HTS the substance of any action taken by the USTR under section 404(d)(3) of the URAA.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to section 301 of title 3, United States Code, section 404(d)(3) of the URAA, and section 604 of the Trade Act do proclaim that:

(1) Additional U.S. notes to chapter 4 of the HTS are modified as specified in the Annex to this proclamation.

(2) The USTR is authorized to exercise my authority under section 604 of the Trade Act [19 U.S.C. 2483] to embody in the HTS the substance of any actions taken by USTR under section 404(d)(3) of the URAA [19 U.S.C. 3601(d)(3)].

(3) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(4) This proclamation is effective on the date of signature of this proclamation, and the modifications to the HTS made by the Annex to this proclamation shall be effective on the dates that are specified in that Annex.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of August, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.

WILLIAM J. CLINTON.

ANNEX

The Annex of Proclamation 6914, which amended the Harmonized Tariff Schedule of the United States, is not set out under this section because the Harmonized Tariff Schedule is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

§ 2484. International drug control

The President shall submit a report to Congress at least once each calendar year listing those foreign countries in which narcotic drugs and other controlled substances (as listed under section 812 of title 21) are produced, processed, or transported for unlawful entry into the United States. Such report shall include a description of the measures such countries are taking to prevent such production, processing, or transport.

(Pub. L. 93–618, title VI, § 606, Jan. 3, 1975, 88 Stat. 2073.)

§ 2485. Voluntary limitations on exports of steel to United States

No person shall be liable for damages, penalties, or other sanctions under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] or the Antitrust Acts (as defined in section 4 of the Federal Trade Commission Act [15 U.S.C. 44]), or under any similar State law, on account of his negotiating, entering into, participating in, or implementing an arrangement providing for the voluntary limitation on exports of steel and steel products to the United States, or any modification or renewal of such an arrangement, if such arrangement or such modification or renewal—

(1) was undertaken prior to January 3, 1975, at the request of the Secretary of State or his delegate, and

(2) ceases to be effective not later than January 1, 1975.

(Pub. L. 93–618, title VI, § 607, Jan. 3, 1975, 88 Stat. 2073.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

§ 2486. Trade relations with North American countries

(a) Negotiations for free trade area with Canada

It is the sense of the Congress that the United States should enter into a trade agreement with Canada which will guarantee continued stability to the economies of the United States and Canada. In order to promote such economic stability, the President may initiate negotiations for a trade agreement with Canada to establish a free trade area covering the United States and Canada. Nothing in this section shall be construed as prior approval of any legislation which may be necessary to implement such a trade agreement.

(b) Regional study

The President shall study the desirability of entering into trade agreements with countries in the northern portion of the western hemisphere to promote the economic growth of the United States and such countries and the mutual expansion of market opportunities and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate his findings and conclusions within 2 years after July 26, 1979. The study shall include an examination of competitive opportunities and conditions of competition between such countries and the United States in the agricultural, energy, and other appropriate sectors.

(Pub. L. 93–618, title VI, § 612, Jan. 3, 1975, 88 Stat. 2076; Pub. L. 96–39, title XI, § 1104(a), (b)(1), July 26, 1979, 93 Stat. 310.)

AMENDMENTS

1979—Pub. L. 96–39 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective July 26, 1979, see section 1114 of Pub. L. 96–39, set out as an Effective Date note under section 2581 of this title.

§ 2487. Repealed. Pub. L. 102–145, § 121, as added Pub. L. 102–266, § 102, Apr. 1, 1992, 106 Stat. 95

Section, Pub. L. 93–618, title VI, § 613, Jan. 3, 1975, 88 Stat. 2076, related to limitation on credit to Russia.

SUBCHAPTER VII—TARIFF TREATMENT OF PRODUCTS OF, AND OTHER SANCTIONS AGAINST, UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES

§ 2491. Short title

This subchapter may be cited as the ''Narcotics Control Trade Act''.

(Pub. L. 93–618, title VIII, § 801, as added Pub. L. 99–570, title IX, § 9001, Oct. 27, 1986, 100 Stat. 3207–164.)

§ 2492. Tariff treatment of products of uncooperative major drug producing or drug-transit countries

(a) Required action by President

Subject to subsection (b) of this section, for every major drug producing country and every major drug-transit country, the President shall, on or after March 1, 1987, and March 1 of each succeeding year, to the extent considered necessary by the President to achieve the purposes of this subchapter—

(1) deny to any or all of the products of that country tariff treatment under the Generalized System of Preferences, the Caribbean Basin Economic Recovery Act [19 U.S.C. 2701 et seq.], or any other law providing preferential tariff treatment;

(2) apply to any or all of the dutiable products of that country an additional duty at a rate not to exceed 50 percent ad valorem or the specific rate equivalent;

(3) apply to one or more duty-free products of that country a duty at a rate not to exceed 50 percent ad valorem;

(4) take the steps described in subsection (d)(1) or (d)(2) of this section, or both, to curtail air transportation between the United States and that country;

(5) withdraw the personnel and resources of the United States from participation in any arrangement with that country for the pre-

clearance of customs by visitors between the United States and that country; or

(6) take any combination of the actions described in paragraphs (1) through (5).

(b) Certifications; Congressional action

(1)(A) Subject to paragraph (3), subsection (a) of this section shall not apply with respect to a country if the President determines and certifies to the Congress, at the time of the submission of the report required by section 2291h of title 22, that—

(i) during the previous year the country has cooperated fully with the United States, or has taken adequate steps on its own—

(I) in satisfying the goals agreed to in an applicable bilateral narcotics agreement with the United States (as described in paragraph (B)) or a multilateral agreement which achieves the objectives of paragraph (B),

(II) in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States,

(III) in preventing and punishing the laundering in that country of drug-related profits or drug-related moneys, and

(IV) in preventing and punishing bribery and other forms of public corruption which facilitate the illicit production, processing, or shipment of narcotic and psychotropic drugs and other controlled substances, or which discourage the investigation and prosecution of such acts; or

(ii) for a country that would not otherwise qualify for certification under clause (i), the vital national interests of the United States require that subsection (a) of this section not be applied with respect to that country.

(B) A bilateral narcotics agreement referred to in subparagraph (A)(i)(I) is an agreement between the United States and a foreign country in which the foreign country agrees to take specific activities, including, where applicable, efforts to—

(i) reduce drug production, drug consumption, and drug trafficking within its territory, including activities to address illicit crop eradication and crop substitution;

(ii) increase drug interdiction and enforcement;

(iii) increase drug education and treatment programs;

(iv) increase the identification of and elimination of illicit drug laboratories;

(v) increase the identification and elimination of the trafficking of essential precursor chemicals for the use in production of illegal drugs;

(vi) increase cooperation with United States drug enforcement officials; and

(vii) where applicable, increase participation in extradition treaties, mutual legal assistance provisions directed at money laundering, sharing of evidence, and other initiatives for cooperative drug enforcement.

(C) A country which in the previous year was designated as a major drug producing country or a major drug-transit country may not be determined to be cooperating fully under subparagraph (A)(i) unless it has in place a bilateral narcotics agreement with the United States or a multilateral agreement which achieves the objectives of subparagraph (B).

(D) If the President makes a certification with respect to a country pursuant to subparagraph (A)(ii), he shall include in such certification—

(i) a full and complete description of the vital national interests placed at risk if action is taken pursuant to subsection (a) of this section with respect to that country; and

(ii) a statement weighing the risk described in clause (i) against the risks posed to the vital national interests of the United States by the failure of such country to cooperate fully with the United States in combating narcotics or to take adequate steps to combat narcotics on its own.

(E) The President may make a certification under subparagraph (A)(i) with respect to a major drug producing country or drug-transit country which is also a producer of licit opium only if the President determines that such country has taken steps to prevent significant diversion of its licit cultivation and production into the illicit market, maintains production and stockpiles at levels no higher than those consistent with licit market demand, and prevents illicit cultivation and production.

(2) In determining whether to make the certification required by paragraph (1) with respect to a country, the President shall consider the following:

(A) Have the actions of the government of that country resulted in the maximum reductions in illicit drug production which were determined to be achievable pursuant to section 2291(e)(4)[1] of title 22? In the case of a major drug producing country, the President shall give foremost consideration, in determining whether to make the certification required by paragraph (1), to whether the government of that country has taken actions which have resulted in such reductions.

(B) Has that government taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacturing of and trafficking in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances and of illicit laboratories and the arrest and prosecution of violators involved in the traffic in such drugs and substances significantly affecting the United States?

(C) Has that government taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related moneys, as evidenced by—

[1] See References in Text note below.

(i) the enactment and enforcement by that government of laws prohibiting such conduct,

(ii) that government entering into, and cooperating under the terms of, mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

(iii) the degree to which that government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts?

(D) Has that government taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, bribery and other forms of public corruption which facilitate the illicit production, processing, or shipment of narcotic and psychotropic drugs and other controlled substances, or which discourage the investigation and prosecution of such acts, as evidenced by the enactment and enforcement of laws prohibiting such conduct?

(E) Has that government, as a matter of government policy, encouraged or facilitated the production or distribution of illicit narcotic and psychotropic drugs and other controlled substances?

(F) Does any senior official of that government engage in, encourage, or facilitate the production or distribution of illicit narcotic and psychotropic drugs and other controlled substances?

(G) Has that government investigated aggressively all cases in which any member of an agency of the United States Government engaged in drug enforcement activities since January 1, 1985, has been the victim of acts or threats of violence, inflicted by or with the complicity of any law enforcement or other officer of such country or any political subdivision thereof, and has energetically sought to bring the perpetrators of such offense or offenses to justice?

(H) Having been requested to do so by the United States Government, does that government fail to provide reasonable cooperation to lawful activities of United States drug enforcement agents, including the refusal of permission to such agents engaged in interdiction of aerial smuggling into the United States to pursue suspected aerial smugglers a reasonable distance into the airspace of the requested country?

(I) Has that government made necessary changes in legal codes in order to enable law enforcement officials to move more effectively against narcotics traffickers, such as new conspiracy laws and new asset seizure laws?

(J) Has that government expeditiously processed United States extradition requests relating to narcotics trafficking?

(K) Has that government refused to protect or give haven to any known drug traffickers, and has it expeditiously processed extradition requests relating to narcotics trafficking made by other countries?

(3) Subsection (a) of this section shall apply to a country without regard to paragraph (1) of this subsection if the Congress enacts, within 45 days of continuous session after receipt of a certification under paragraph (1), a joint resolution disapproving the determination of the President contained in that certification.

(4) If the President takes action under subsection (a) of this section, that action shall remain in effect until—

(A) the President makes the certification under paragraph (1), a period of 45 days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproval; or

(B) the President submits at any other time a certification of the matters described in paragraph (1) with respect to that country, a period of 45 days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproving the determination contained in that certification.

(5) For the purpose of expediting the consideration and enactment of joint resolutions under paragraphs (3) and (4)—

(A) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Ways and Means shall be treated as highly privileged in the House of Representatives; and

(B) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Finance shall be treated as privileged in the Senate.

(c) Duration of action

The action taken by the President under paragraph (1), (2), or (3) of subsection (a) of this section shall apply to the products of a foreign country that are entered, or withdrawn from warehouse for consumption, during the period that such action is in effect.

(d) Presidential action regarding aviation

(1)(A) The President is authorized to notify the government of a country against which is imposed the sanction described in subsection (a)(4) of this section of his intention to suspend the authority of foreign air carriers owned or controlled by the government or nationals of that country to engage in foreign air transportation to or from the United States.

(B) Within 10 days after the date of notification of a government under subparagraph (A), the Secretary of Transportation shall take all steps necessary to suspend at the earliest possible date the authority of any foreign air carrier owned or controlled, directly or indirectly, by the government or nationals of that country to engage in foreign air transportation to or from the United States, notwithstanding any agreement relating to air services.

(C) The President may also direct the Secretary of Transportation to take such steps as may be necessary to suspend the authority of any air carrier to engage in foreign air transportation between the United States and that country.

(2)(A) The President may direct the Secretary of State to terminate any air service agreement between the United States and a country against which the sanction described in subsection (a)(4) of this section is imposed in accordance with the provisions of that agreement.

(B) Upon termination of an agreement under this paragraph, the Secretary of Transportation shall take such steps as may be necessary to revoke at the earliest possible date the right of any foreign air carrier owned, or controlled, directly or indirectly, by the government or nationals of that country to engage in foreign air transportation to or from the United States.

(C) Upon termination of an agreement under this paragraph, the Secretary of Transportation may also revoke the authority of any air carrier to engage in foreign air transportation between the United States and that country.

(3) The Secretary of Transportation may provide for such exceptions from paragraphs (1) and (2) as the Secretary considers necessary to provide for emergencies in which the safety of an aircraft or its crew or passengers is threatened.

(4) For purposes of this subsection, the terms ''air transportation'', ''air carrier'', ''foreign air carrier'' and ''foreign air transportation'' have the meanings such terms have under section 40102(a) of title 49.

(e) Standards and guidelines for determining major drug-transit countries

For each calendar year, the Secretary of State, after consultation with the appropriate committees of the Congress, shall establish numerical standards and other guidelines for determining which countries will be considered to be major drug-transit countries under section 2495(3)(A) and (B) of this title.

(Pub. L. 93–618, title VIII, § 802, as added Pub. L. 99–570, title IX, § 9001, Oct. 27, 1986, 100 Stat. 3207–164; amended Pub. L. 100–204, title VIII, § 806(a), Dec. 22, 1987, 101 Stat. 1398; Pub. L. 100–690, title IV, § 4408, Nov. 18, 1988, 102 Stat. 4281; Pub. L. 101–231, § 17(h)(1)–(4), Dec. 13, 1989, 103 Stat. 1965; Pub. L. 106–36, title I, § 1001(a)(8), June 25, 1999, 113 Stat. 131.)

REFERENCES IN TEXT

The Caribbean Basin Economic Recovery Act, referred to in subsec. (a)(1), is title II of Pub. L. 98–67, Aug. 5, 1983, 97 Stat. 384, as amended, which is classified principally to chapter 15 (§ 2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

Subsec. (e) of section 2291 of title 22, referred to in subsec. (b), (2)(A), was repealed and subsec. (i) was redesignated (e) by Pub. L. 102–583, § 6(b)(2), (3), Nov. 2, 1992, 106 Stat. 4932.

CODIFICATION

In subsec. (d)(4), ''section 40102(a) of title 49'' substituted for ''section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301)'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1999—Subsec. (b)(1)(A). Pub. L. 106–36 substituted ''section 2291h of title 22'' for ''section 2291(e) of title 22'' in introductory provisions.

1989—Subsec. (b)(1)(A)(i)(IV). Pub. L. 101–231, § 17(h)(1), substituted ''illicit production'' for ''production''.

Subsec. (b)(1)(B)(iii). Pub. L. 101–231, § 17(h)(2), substituted ''education and treatment programs'' for ''treatment''.

Subsec. (b)(1)(B)(v). Pub. L. 101–231, § 17(h)(3), substituted ''essential precursor chemicals'' for ''precursor chemicals''.

Subsec. (b)(2)(D). Pub. L. 101–231, § 17(h)(4), substituted ''illicit production'' for ''production''.

1988—Subsec. (b)(1). Pub. L. 100–690, § 4408(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Subsection (a) of this section shall not apply with respect to a country if the President determines and so certifies to the Congress, at the time of the submission of the report required by section 2291(e) of title 22, that during the previous year that country has cooperated fully with the United States, or has taken adequate steps on its own, in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States and in preventing and punishing corruption by government officials and the laundering in that country of drug-related profits or drug-related monies.''

Subsec. (b)(2). Pub. L. 100–690, § 4408(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''In making the certification required by paragraph (1), the President shall give foremost consideration to whether the actions of the government of the country have resulted in the maximum reductions in illicit drug production which were determined to be achievable pursuant to section 2291(e)(4) of title 22. The President shall also consider whether such government—

''(A) has taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances and of illicit laboratories and the arrest and prosecution of violators involved in the traffic in such drugs and substances significantly affecting the United States;

''(B) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related monies, as evidence by—

''(i) the enactment and enforcement of laws prohibiting such conduct,

''(ii) the willingness of such government to enter into mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

''(iii) the degree to which such government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts; and

''(C) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, corruption by government officials, with particular emphasis on the elimination of bribery.''

Subsec. (b)(3), (4). Pub. L. 100–690, § 4408(b), substituted ''45 days'' for ''30 days'' wherever appearing.

Subsec. (e). Pub. L. 100–690, § 4408(c), added subsec. (e).

1987—Subsec. (a)(4) to (6). Pub. L. 100–204, § 806(a)(1), added pars. (4) and (5) and redesignated former par. (4) as (6) and amended it generally. Prior to amendment, par. (6) read as follows: ''take any combination of the actions described in paragraphs (1), (2), and (3).''

Subsec. (b). Pub. L. 100–204, § 806(a)(2), inserted ''corruption by government officials and'' after ''preventing and punishing'' in par. (1) and added par. (2)(C).

Subsec. (c). Pub. L. 100–204, § 806(a)(3), inserted ''paragraph (1), (2), or (3) of'' after ''under''.

Subsec. (d). Pub. L. 100–204, § 806(a)(4), added subsec. (d).

§ 2493. Sugar quota

Notwithstanding any other provision of law, the President may not allocate any limitation imposed on the quantity of sugar to any country

which has a Government involved in the trade of illicit narcotics or is failing to cooperate with the United States in narcotics enforcement activities as defined in section 2492(b) of this title as determined by the President.

(Pub. L. 93–618, title VIII, § 803, as added Pub. L. 99–570, title IX, § 9001, Oct. 27, 1986, 100 Stat. 3207–165.)

§ 2494. Progress reports

The President shall include as a part of the annual report required under section 2291h of title 22 an evaluation of progress that each major drug producing country and each major drug-transit country has made during the reporting period in achieving the objectives set forth in section 2492(b) of this title.

(Pub. L. 93–618, title VIII, § 804, as added Pub. L. 99–570, title IX, § 9001, Oct. 27, 1986, 100 Stat. 3207–166; amended Pub. L. 106–36, title I, § 1001(a)(9), June 25, 1999, 113 Stat. 131.)

AMENDMENTS

1999—Pub. L. 106–36 substituted ''section 2291h of title 22'' for ''section 2291(e)(1) of title 22''.

§ 2495. Definitions

For purposes of this subchapter—

(1) continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated;

(2) the term ''major drug producing country'' means a country that illicitly produces during a fiscal year 5 metric tons or more of opium or opium derivative, 500 metric tons or more of coca, or 500 metric tons or more of marijuana;

(3) the term ''major drug-transit country'' means a country—

(A) that is a significant direct source of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States;

(B) through which are transported such drugs or substances; or

(C) through which significant sums of drug-related profits or monies are laundered with the knowledge or complicity of the government; and

(4) the term ''narcotic and psychotropic drugs and other controlled substances'' has the same meaning as is given by any applicable international narcotics control agreement or domestic law of the country or countries concerned.

(Pub. L. 93–618, title VIII, § 805, as added Pub. L. 99–570, title IX, § 9001, Oct. 27, 1986, 100 Stat. 3207–166; amended Pub. L. 101–231, § 17(h)(5), Dec. 13, 1989, 103 Stat. 1965; Pub. L. 106–36, title I, § 1001(a)(10), June 25, 1999, 113 Stat. 131.)

AMENDMENTS

1999—Par. (2). Pub. L. 106–36 struck out ''and'' at end.

1989—Par. (2). Pub. L. 101–231 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''the term 'major drug producing country' means a country producing five metric tons or more of opium or opium derivative during a fiscal year or producing five hundred metric tons or more of coca or marijuana (as the case may be) during a fiscal year; and''.

CHAPTER 13—TRADE AGREEMENTS ACT OF 1979